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# **The 2017 Constitutional Referendum in Turkey**

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APRIL 2017

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## INTRODUCTION

Millions of Turkish citizens will go to the polls on April 16 to vote on eighteen amendments to the 1982 Constitution – including the replacement of the parliamentary system, which has been in place since the late Ottoman period, with presidentialism.

Until 2014, Turkish presidents were selected by Parliament after lengthy negotiations between the leaders of the major political parties. Over the decades, there were times when the various parties proved unable to reach an agreement over which presidential candidate(s) to support and created deadlocks – which coup plotters repeatedly exploited to intervene in civilian politics. For instance, the 1980 coup d'état took place hours after Parliament failed to pick the country's seventh president after 124 rounds of voting.

Since 1960, succeeding generations of coup plotters imagined the President as a head of state with no political mandate or executive authority, but enough power to hamper the actions taken by the executive branch, led by the Prime Minister and Parliament. The 1982 Constitution, which was drafted under the military junta's supervision, reaffirmed the Presidency's role as an instrument of the guardianship regime to maintain the establishment's control over the country's affairs and keep a lid on the power of elected officials. In the 1980s, Gen. Kenan Evren, the 1980 coup's leader, became Turkey's seventh president and ensured that elected governments did not stray too far from the narrow confines set by the military. The judiciary, likewise, had been structured since the 1960s with the purpose of clamping down on any initiative developed by the Turkish people's elected representatives. When center-right politicians like Turgut Özal and Süleyman Demirel replaced Evren in the late 1980s and 1990s, a period characterized by political turmoil and economic crises, supporters of the establishment made the

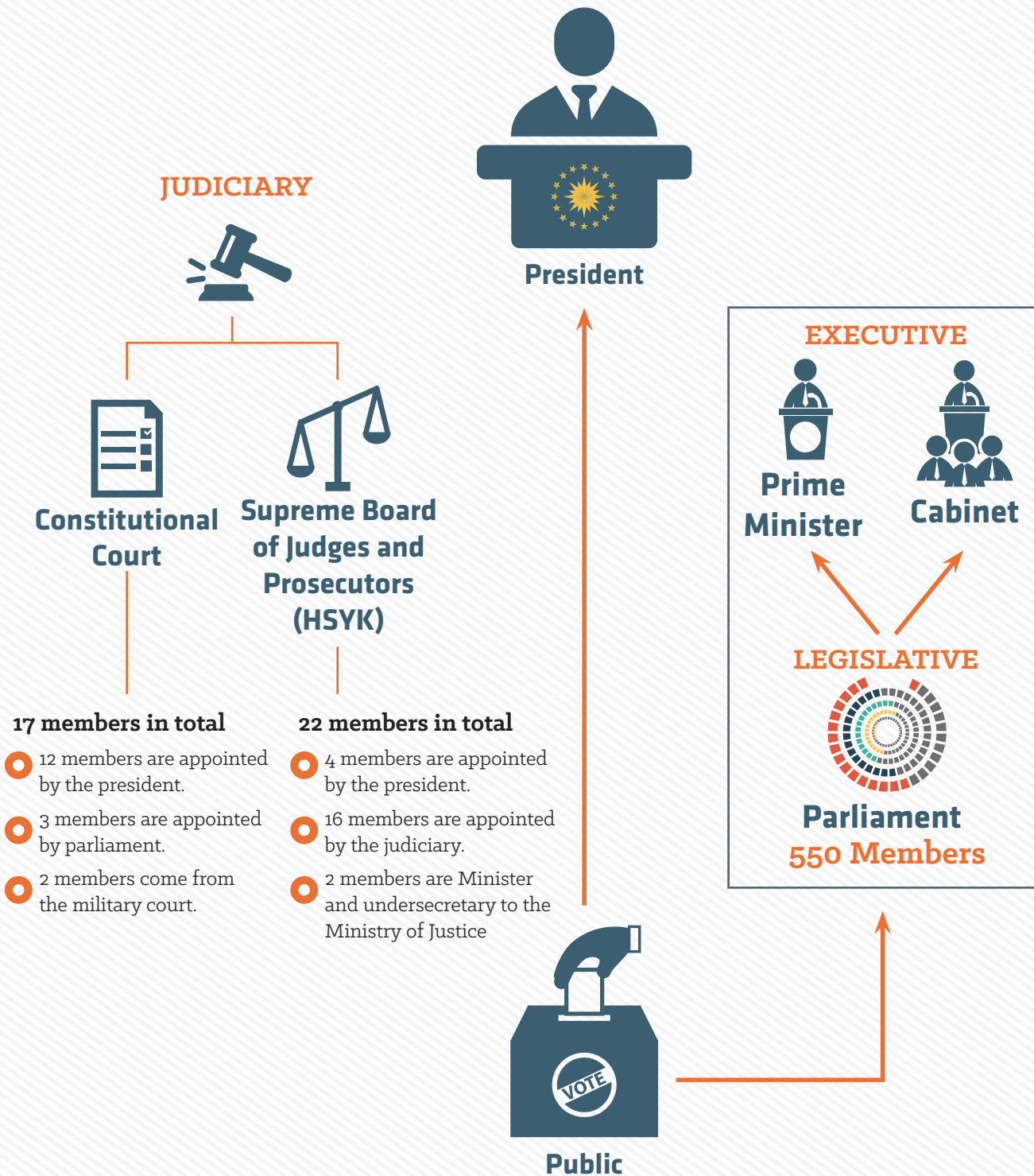
case that presidents ought to be chosen from outside politics to prevent political chaos. Ahmet Necdet Sezer, the Constitutional Court's chief justice, proved them wrong. Handpicked by the leaders of major political parties, Sezer not only triggered the devastating 2001 financial crisis by throwing a copy of the Constitution to then-Prime Minister Bülent Ecevit, but also vetoed key pieces of legislation sponsored by the Justice and Development Party (AK Party) government between 2002 and 2007.

When the military openly threatened to overthrow Turkey's democratically-elected government following the AK Party's decision to nominate then-Foreign Minister Abdullah Gül for President, the deadlock was resolved through early elections – in which the incumbents won a landslide victory. Later in 2007, a constitutional referendum was held to introduce direct presidential elections for the first time in the Republic's history. In addition to making the Presidency more representative, the amendment eliminated the risk of parliamentary deadlocks over presidential elections in the future. In August 2014, Recep Tayyip Erdoğan became Turkey's first directly elected president – which, in turn, created a problem of dual legitimacy, since both the President and the Prime Minister had a clear mandate and considerable powers.

If the April 16 referendum passes, the Presidency and the Prime Ministry will be merged to create a more functional, streamlined and effective system of government with a clear separation between the executive branch, the legislative and judicial branches. Opponents of constitutional reform, in turn, maintain that the parliamentary system has served Turkey well and argue that the proposed changes will give too much power to the President. This booklet serves as a technical guide to the proposed constitutional changes and provides a summary of the arguments made by the yes and no campaigns regarding each amendment.

## SEPARATION OF POWERS

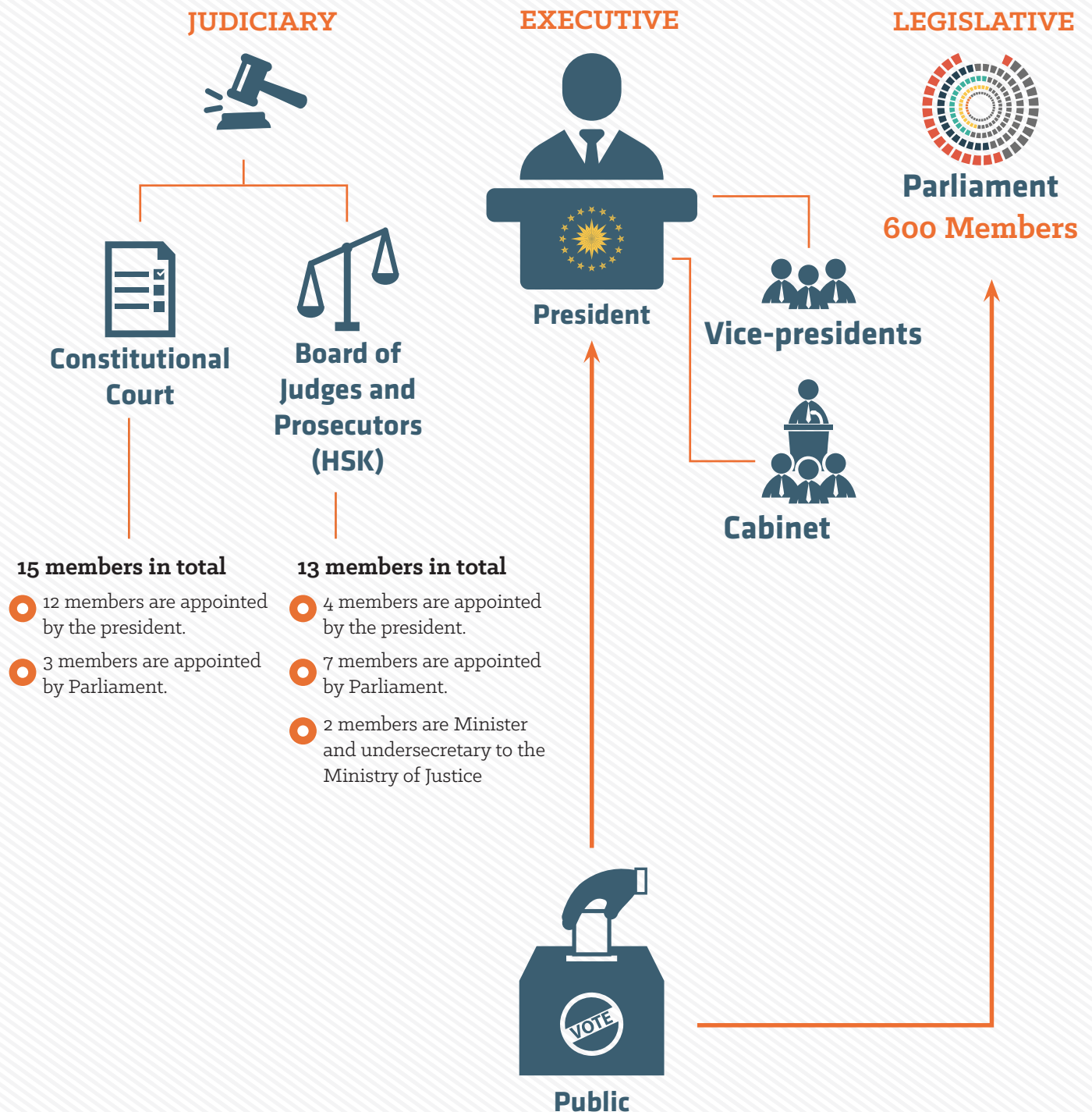
### CURRENT SYSTEM





## SEPARATION OF POWERS

### NEW SYSTEM









# LEGISLATIVE BRANCH

## Article 75:

### Existing Rule:

The Grand National Assembly of Turkey consists of 550 deputies elected in general elections.

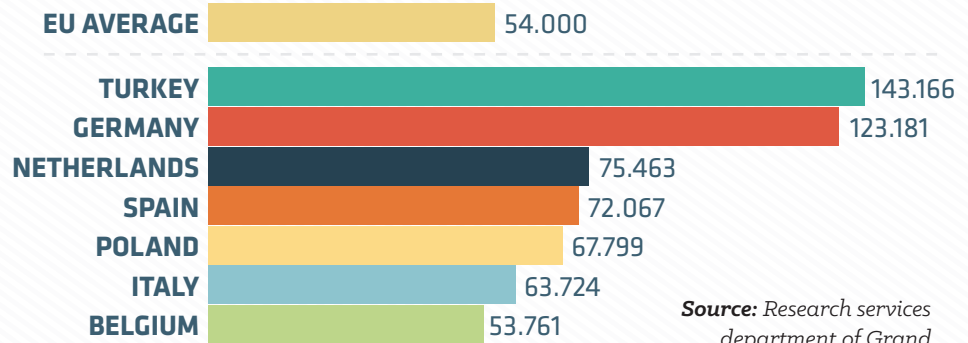
### Proposed Rule:

The Turkish Grand National Assembly consists of 600 deputies elected in general elections.

## Composition of the Grand National Assembly of Turkey



### POPULATION PER DEPUTY



Source: Research services  
department of Grand  
National Assembly of Turkey

### The 'No' Campaign

- It is not necessary to increase the number of deputies to 600. Adding 50 new seats to the Parliament will cost billions in salaries and retirement benefits, which would impose a heavy burden on the nation.
- The United States, whose population exceeds 324,1 million, has only 435 representatives and 100 senators. Likewise, in Russia, which has a population of 143,4 million, 450 deputies serve in the legislative assembly. By contrast, under the proposed amendments, the number of deputies will be increased to 600 – though, keeping in mind that Turkey's population is just 80 million, even 300 deputies would be enough.
- As long as the 10-percent national threshold remains intact and electoral districts are narrowed down for no reason, it is impossible to claim that the increase in the number of deputies will make Parliament more balanced and representative.

### The 'Yes' Campaign

- To make sure that voters are fairly represented in Parliament, the voter-to-deputy ratio must remain at a certain level. If adopted, the amendment will make the legislative branch more representative of the electorate.
- In 1995, the coalition government between the True Path Party (DYP) and the Republican People's Party (CHP) amended the Constitution to increase the number of deputies from 450 to 550. At the time, Turkey's population was around 59 million and there were approximately 29 million registered voters. Keeping in mind that the country's population has since reached 79 million and the number of voters are 58 million, it is necessary to further increase the number of deputies.
- Provided that the chief executive will be directly elected by the people, it is important for Parliament to represent the people in a just manner. Moving forward, there will be no need for a national threshold to promote political stability. This is the first of many reforms regarding political representation and additional arrangements will be made once the new system of government is adopted.

## Constitutional Qualifications for Parliamentarians

### The 'No' Campaign

- Supporters of constitutional reform are deceiving young people in order to convince them to vote "yes." If an individual is elected to Parliament at the age of 18, he will be exempt from military service for the rest of his life. At the end of the day, young people from privileged backgrounds will get out of military service, while their peers end up fighting in Syria.

### The 'Yes' Campaign

- The voting age and the age for candidacy should be the same. Almost ten million Turkish citizens are between the ages of 18 and 25. Members of this social group have the right to vote, but they cannot elect someone their own age as their representatives. Under the new rules, young adults will finally be able to send their own representatives to Parliament and their perspective on various issues will be represented in national politics. Furthermore, their exemption from military service should not be considered a bad thing – provided that they will serve their country by serving in the Parliament. Considering that a fraction of parliamentarians are likely to be under the age of 25 and hundred of thousands of Turkish citizens serve in the military every year, the exemption clause's effect on the Armed Forces will be statistically insignificant.

## Article 76:

### Existing Rule:

*This article provides a list of eligibility criteria for parliamentarians, including being of at least 25 years of age, having attained a certain level of education, having no criminal record and, for males, having served in the military.*

### Proposed Rule:

*The amendment reduces the age of candidacy from 25 to 18 and stipulates that individuals who serve in the Parliament will not be required to serve in the military.*



### Some countries where minimum age to be elected is 18

- UNITED KINGDOM
- GERMANY
- NETHERLANDS
- AUSTRIA
- CANADA
- BOSNIA AND HERZEGOVINA
- SOUTH AFRICA
- CUBA
- NORWAY
- DENMARK
- FRANCE
- SPAIN
- MACEDONIA
- PORTUGAL
- SERBIA
- NEW ZELAND





## Article 77

### Existing Rule:

Parliamentary elections are held every four years.

### Proposed Rule:

#### Election term of the Grand National Assembly of Turkey and of the President of the Republic

Parliamentary and presidential elections are simultaneously held every five years. If no presidential candidate receives the majority of votes on election day, a second round of voting will take place to determine the winner.

## Election term of the Grand National Assembly of Turkey

### The 'No' Campaign

- Provided that parliamentary and presidential elections will be held on the same day, both races will take place in the same political climate and voters will be more likely to support candidates from similar backgrounds in both contests – which will render Parliament unable to effectively limit executive power.

### The 'Yes' Campaign

- The amendment, will significantly reduce the risk of early elections. Furthermore, it will provide elected officials with a new tool (i.e. simultaneous early elections for the legislative and executive branches) to resolve political crises, promote a culture of reconciliation and pave the way to five years of uninterrupted stability.

## ELECTIONS AROUND THE WORLD

- Elections at different times
- Consecutive elections
- Simultaneous elections

### Case Study: The United States

Presidential and congressional races mostly take place at different times in the United States. Elections for the House of Representatives are held in every even-numbered year. Senators, in turn, serve six-year terms each, but their terms are arranged such that approximately one-third of the seats are up for election every two years. By contrast, U.S. presidents are elected for a term of four years. On Election Day, when Donald Trump was elected President, all House of Representatives races and elections for approximately one-third of the Senate took place. Typically, the U.S. government becomes extremely inefficient if the executive branch and the U.S. Congress are controlled by opposing parties. However, some experts make the case the elections for both branches of government be held simultaneously by increasing the tenure of representatives to four years and Senate terms to eight years.

### Case Study: France

Until 2000, presidential and parliamentary elections were held at different times. Electoral laws were subsequently amended to hold presidential elections in April and general elections one month later. The measure was implemented due to long-standing tensions between the Parliament and French presidents.



### The Proposed System of Government in Turkey

If the April 16 referendum passes, presidential and parliamentary elections will be held on the same day every five years. On Election Day, voters will go to the polls to vote for their presidential candidate of choice and for Parliament. However, if none of the presidential candidates manages to win a simple majority in the first round, the two most popular candidates will compete against each other in the second round two weeks later. In the second round, the electorate can either side with the candidate more likely to work harmoniously with Parliament or opt for the alternative in order to create a balance of power between the executive and legislative branches. Presidential candidates, furthermore, will be able to endorse others in the second round: Let us assume that seven candidates participate in the first round and, provided that none of them could receive the majority of votes, two candidates advance to the second round. The remaining five candidates could endorse one of the two remaining contenders and influence the outcome. As such, the simple majority requirement not only ensures that a given candidate enjoys sufficient popular support, but also promotes pluralism by effectively requiring candidates to appeal to various social groups.

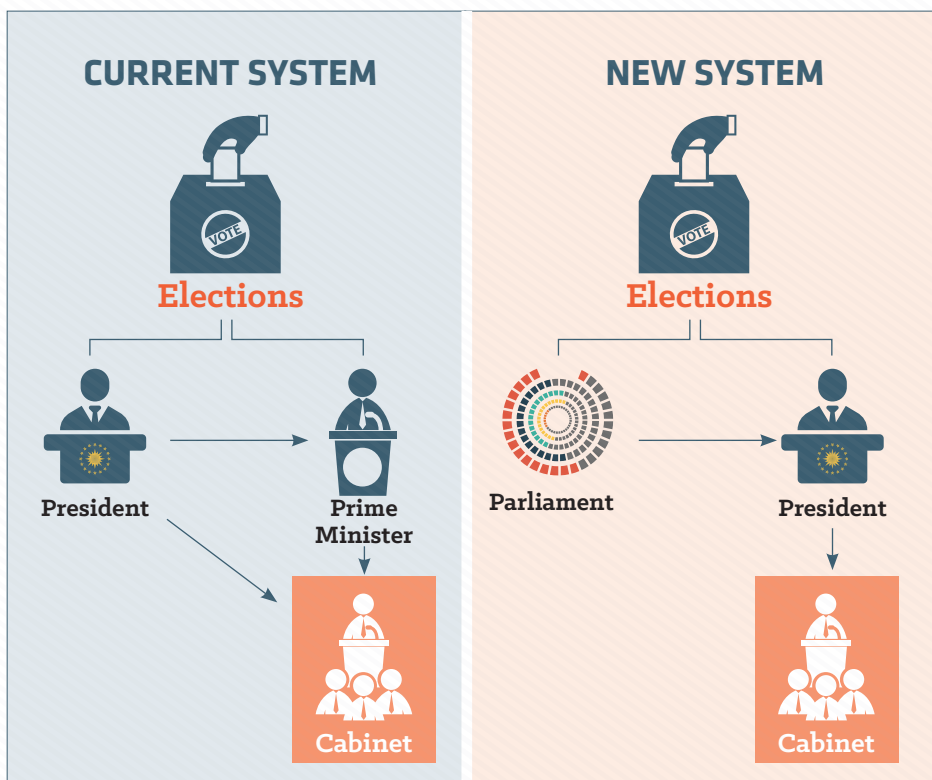
## Duties and powers of the Grand National Assembly of Turkey

### The 'No' Campaign

- The Turkish Parliament will no longer have a constitutional mandate to supervise the executive branch. Furthermore, the President will be able to appoint ministers without parliamentary approval.

### The 'Yes' Campaign

- The presidential system strengthens the separation of powers. As such, cabinet members are picked by the President. The executive branch will not derive its democratic legitimacy from the legislature but the nation itself.



## Supervision by the Grand National Assembly of Turkey

### The 'No' Campaign

- The amendments will prevent Parliament from supervising the executive branch through legal means. For example, if the President or cabinet members are involved in a corruption case, parliamentarians will not be able to move for a vote of no confidence.

### The 'Yes' Campaign

- Parliamentarians will have a stronger tool at their disposal — parliamentary inquiries— to more effectively supervise the executive branch. For the first time in the Republic's history, Parliament will be able to investigate the actions of sitting presidents — who currently enjoy full legal immunity unless charged with treason. If necessary, Parliament will be able to refer the President and members of his/her cabinet to the Supreme Court.

## Article 87:

### Existing Rule:

The article provides a list of the Parliament's powers and responsibilities, such as monitoring the Cabinet and cabinet ministers, granting the Cabinet the power to issue decrees and monitoring draft budgets.

### Proposed Rule:

Parliament has a number of powers and responsibilities including the enactment, amendment and abolishing of laws, approving draft budgets, issuing currency, declaring war, ratifying international treaties and agreements, proclaiming amnesties and issuing pardons.

## Article 98:

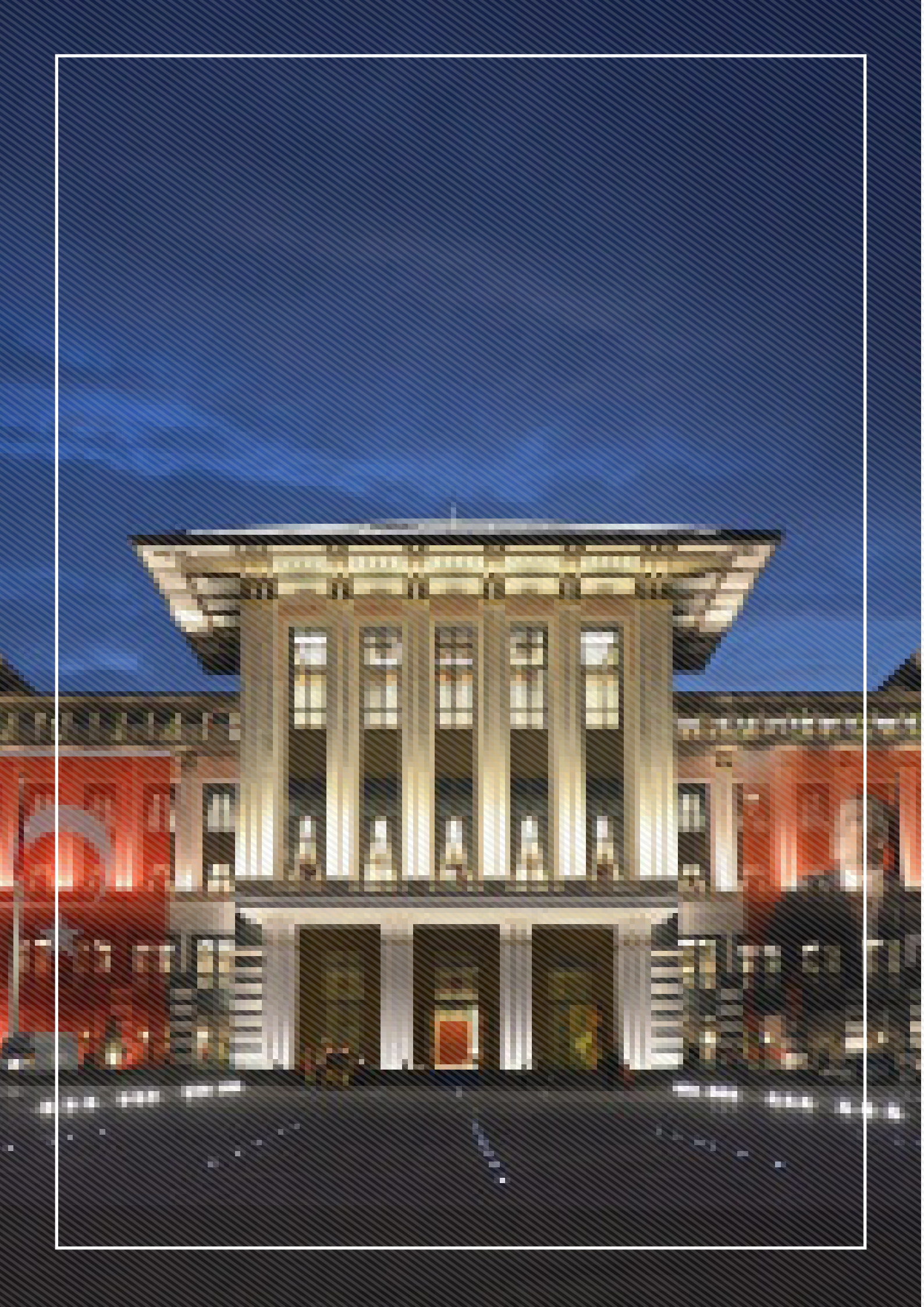
### Existing rule:

Parliament has the power to supervise the executive branch by questioning officials, launching parliamentary inquiries, introducing motions of censure and calling for votes of non-confidence.

### Proposed Rule:

Parliament has the power to launch parliamentary investigations with a specific focus and hold general debates. Members of Parliament have the right to direct written questions to the executive branch. The amendments prohibit the participation of any representative of the executive branch in general debates or parliamentary investigations.







# EXECUTIVE BRANCH

## Article 101

### Existing Rule

The president shall be elected from among members of the Grand National Assembly or Turkish citizens who meet the eligibility criteria to serve in Parliament. The President serves for a five-year term. An individual cannot be elected President more than twice. Presidential candidates can be nominated by a written proposal signed by 20 deputies. In addition, a group of political parties, whose total number of votes in the most recent parliamentary election exceeds the 10-percent national threshold, may nominate a joint candidate. When elected, the President's ties to his party will be cut off and their membership in the Parliament will be terminated.

### Proposed Rule: Nomination and election of the President of the Republic

The president is directly elected by the public from among individuals of at least 40 years of age, who have completed their higher education, have the right to serve in Parliament and are born Turkish nationals. The term of office for the President is five years. No individual can be elected President more than twice. Presidential candidates can be nominated by a minimum of 100,000 voters or by an individual or a group of political parties, which received at least five percent of the vote, individually or in sum, in the most recent general election.

## Qualifications and Impartiality of the President of the Republic

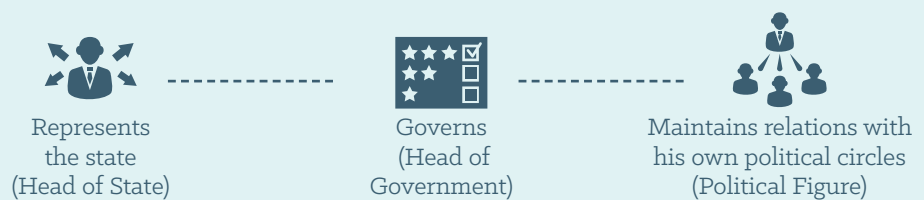
### The 'No' Campaign

- The President will be eligible to be a member and an executive of any political party – which means that they can freely shape their party and exert influence over Parliament.
- When the chairman of a political party becomes President, they will not be the President of all voters because their actions will be shaped by the party's platform, principles and goals. The President should be impartial and serve as a safety valve. By virtue of being the leader of a political party, however, they cannot perform this function – which could lead the state to collapse.
- According to the Constitution, the President can be elected for two terms. However, if a partisan president, nearing the end of their second term in office, can persuade three fifths of parliamentarians to call for early elections, they could be elected for an additional term. As such, the two-term limit does not really exist.

### The 'Yes' Campaign

- Voters may respond by not electing many deputies from the President's party. Even if members of a given political party control the Presidency and have a majority in Parliament, it will be the people's decision. In addition, the new system can also lead to an intra-party reform. Compliance laws will strengthen parliamentary commissions. Meanwhile, parliamentary elections will be reformed.
- No country in the European Commission has provisions that strip the president of his party's post. The President's belonging to a party is one thing, while his/her duties are another.
- If Parliament decides on an early election in the second term of the president, the president may become a candidate for the third time. It is an exception to let people evaluate whether or not Parliament has made a deliberate move against the government. If they elect the same President for the third time, Parliament regulates itself accordingly. If not, they show that they agree with Parliament's decision.

### UNDER THE PROPOSED SYSTEM OF GOVERNMENT, THE PRESIDENT WILL PERFORM THREE FUNCTIONS



### PRESIDENTIAL ACCOUNTABILITY

If the President makes political mistakes,



He/She will be held accountable by voters in the elections.

If the President makes legal mistakes,



He/She will be legally accountable. (For instance, when they violate personal rights, you can sue them for compensation at the court.)

If the president engages in criminal acts



He/She will be criminally accountable in front of a mechanism like parliamentary inquiry.

## Parliamentary oversight over President

### The 'No' Campaign

- With regard to the subject, the responsibility entails authority in public law. The new Constitution will equip the presidential seat with the highest authorities, while minimizing punitive measures to a level that renders supervising the president nearly impossible.
- Any mechanism of checks and balances is not present in the proposed regime. The system avoids restraining the authorities vested in the president in every possible way.
- The president is required to report to anyone. In fact, he/she will not be required to give an account or to be directly supervised. Additionally, it is not possible to reach the 400 ballots needed to bring charges against the president

### The 'Yes' Campaign

- For the first time, the Constitution will have provisions under which a president could be charged for any kind of offense. The president's reference to the Supreme Court will also be enabled. These reforms will consolidate the state of the law.
- Additionally, the current system suggests that the president can be referred to the Supreme Court only when 413 out of 550 deputies have agreed. With this amendment, however, Parliament can be referred to the Supreme Court if 400 out of 600 Parliament members agree. So, it is out of the question that the new system downplays the authority of Parliament.
- It is nothing but a presumption. If a president commits a penal offense and Parliament does not exert its authority in this mechanism, this entails political consequences. The people will give the necessary answer. There is a reason that it will be based on the qualified majority since it may lead to crises. The U.S. also uses a two-third vote.

## Article 105:

### Existing Rule:

Judicial authorities, including the Constitutional Court, cannot be resorted to against decisions and orders personally prescribed by the President. The President can only be tried for treason and can be found guilty by a three-fourths majority.

### Proposed Rule:

#### The President's criminal liability

Parliament will hold a debate on the motion within one month and may decide to launch an inquiry for any crime provided that the motion is supported by a three-fifths majority in a secret ballot.

### CURRENT SITUATION NEW SYSTEM



The president cannot be held to account for his decisions during his term in office and any charge cannot be brought against him regarding his assigned position.

The president also does not have any judicial or penal responsibility.

The president can only be charged for treason with a vote by 413 out of 550 deputies

413 out of 550

deputies

A charge can be brought against the president before parliament with a motion accepted by the

absolute majority of deputies

301 out of 600

Parliament can also launch an investigation into the President's actions with

360 secret votes

three-fifths of the parliament

The President can be investigated and referred to the Supreme Court with the support of

400 out of 600

deputies



## Article 104:

### Existing Rule:

*The Prime Minister is the chief executive in the current system. Cabinet members are picked by the Prime Minister and approved by the President before Parliament holds a vote of confidence.*

### Proposed Rule:

*The President will be the chief executive under the proposed system of government and will have the authority to appoint or dismiss vice president(s) and ministers.*

## The President's Duties and Powers

### The 'No' Campaign

- This regulation is an arrangement that grants excessive power to the role of the president while drastically limiting the role of Parliament.
- The president will be able to assign or dismiss who he wants with such a system change, which is deemed as rather inconvenient. With this system, Parliament will be completely stripped of its authority and ministers will not come from inside Parliament. This system is not like the presidential system in the U.S. where even the president of the U.S. appoints ambassadors with congressional approval.
- The president is given the authority to legislate by signing decrees into law. The presidential system brings management through "fermans" (meaning decrees). The president is given the authority of a sultanate, which contradicts the premise that a strong government is established with a strong Parliament.

### The 'Yes' Campaign

- The president will make appointments to only certain strategic positions, not all of them. He/she cannot appoint anyone as he/she wishes. He/she is legally responsible for himself/herself and for the person appointed.
- With the new amendment the president can issue a decree, not law. The most important thing to the state is that the law is superior to a decree. Since the legislative body is the Assembly, the superiority of this issue must be placed there. The authority given to the president regarding the proposal of laws is only regarding the budget.
- Cabinet decree, which exists in the current system. It is emphasized that it is a necessary procedure in the executive. Therefore, a procedure corresponding to the Council of Ministers is given to the president.



### PROPOSED RULE MENTIONS A LIMITED DECREE SYSTEM

- The president cannot issue a decree on fundamental rights, individual rights or duties together with political rights and duties of the people.
- Decisions except for the period of the state of emergency are not in law, but under law.
- The president cannot issue a decree on matters that are clearly set in law.
- The Assembly will have the authority to declare a decree null and void by issuing a law on the same subject.
- Decrees are subject to the supervision of the Assembly and the Constitutional Court.
- If there is a contradiction between the law and the decree, the law will be applied.
- If any court disagrees with the Constitution when it implements the decision, it will be able to carry it to the Constitutional Court in a concrete normal way.

## The President's Duties And Powers

### Article 104:

#### Existing Rule:

The prime minister is the head executive in the current system. Ministers chosen by him are offered a vote of confidence and approved by the president.

#### Proposed Rule:

The president will be head executive in the coming system and appoint vice presidents and ministers and cease their duties.

### DISCUSSIONS ON FEDERALISM

#### The 'No' Campaign

- The realization of the constitutional amendment will pave the way for autonomy, federation and fragmentation. The president will be able to set up public legal entities and reshape the bureaucracy by himself, which means Turkey can become an autonomous state or a federation via presidential decree someday. Such an authority would lead the country to be divided in the mid- to long term.

#### The 'Yes' Campaign

- Argument that the presidential system brings with it federalism, is wrong. There are states that are governed by a presidential system but are unitary states, such as South Korea, Chile and Indonesia. In fact, research shows that the unitary state structure is more common in the presidential state systems. To discuss federalism, Articles 123, 126 and 127 of the Constitution need to be included in the Constitutional amendment package. However, there are no such changes in any of these articles within the new system.

### i ISSUES ENACTABLE BY DECREE

Under the Constitution, the president cannot issue a decree on what is envisaged in the Constitution on issues regulated by law. There is a provision on 82 issues that say the matter will be regulated by law. It is highly debated local authorities is one of those 82 issues.

#### There are six issues that can be regulated by decree.

- Regulation of the national Security Council structure
- Regulation of ministry organization
- Regulation of the State Supervisory Body
- Ability to determine the procedures and guidelines of senior management appointments
- Establishment of public, legal entities based on service, such as the Southeast Anatolia Project (GAP), the Thracian Irrigation Association and the Antalya Tourism Association
- Ability to normalize the status of chief of staff \*

*\*Under the current Constitution, the chief of staff is under the prime minister, and because the office of the prime minister will be obsolete, the president may render chief of staff responsibilities either to himself or the ministry.*



## Article 106

### Existing Rule:

The president of the Turkish Grand National Assembly shall act as the president and shall use that authority during times when the president is temporarily absent from his duties, such as illness or going abroad, or if his seat is vacated due to death or any other reason.

### Proposed Rule:

In cases where the president of the Republic is temporarily absent from his/her duties due to illness or travel abroad, the vice president shall act as the president of the Republic and shall use the authority of the president.

## Article 119:

### Existing Rule:

In the event of natural disasters, dangerous epidemics, or severe economic depression, the Council of Ministers, convened by the president, may declare a state of emergency no later than six months in one or more territories of the country or throughout the whole country.

### Proposed Rule:

The President may declare a state of emergency in whole or in part of its territory no later than six months in a state of war, an uprising, a violent movement against the homeland or the Republic, the emergence of widespread violent movements to remove the constitutional order or fundamental rights and freedoms; the serious deterioration of public order, in the event of natural disasters, dangerous epidemics or severe economic depression.

## Vice Presidents and Ministers

### The 'No' Campaign

- The Speaker of the Grand National Assembly of Turkey acts as deputy to the president when the need arises under existing constitutional provisions. Being a member of parliament, the speaker of the Grand National Assembly is an elected official himself/herself. By virtue of his/her office, the speaker works on principled impartiality just like the President.
- Besides, such a provision represents a departure from established practices in this area across the world. For example, in the U.S., the vice president is elected through the popular vote, just like the president. Thus, it becomes legitimate only in this way for the vice president to exercise important presidential powers when necessary.

### The 'Yes' Campaign

- If a U.S. President is removed from power, the vice president completes the remaining period in the term as the "president." In Turkey's case, however, it is considered to be only a proxy and an election must be held within 45 days. Until the elections, a temporary government will run the day to day affairs of the country.
- Another reason why the vice president is not elected in the elections is that it is not proper in terms of political experience. Also, it will lead to duality in the administration.

## Administration of States of Emergency

### The 'No' Campaign

- The authority to declare a state of emergency under the present system belongs to the Council of Ministers convening under the presidency. The possibility of a minimum debate and collective decision-making within the executive body has been lifted when this authority is left only to the president in this most serious moment, as in a serious threat to state and society.

### The 'Yes' Campaign

- On the same day the state of emergency decision is taken, it is presented to the Turkish Grand National Assembly for approval. Parliament has the authority to extend, shorten or remove the state of emergency if he/she wants. If the decrees issued during this period are not approved by Parliament within three months, they remain null and void. So it shows the significance of responsibility and the power of supervision for Parliament.





## Renewal of elections to the Grand National Assembly of Turkey by the president of the Republic

### The 'No' Campaign

- The political control function of the Parliament that exists over the executive will be severely damaged under the proposed changes since the president has the authority to dissolve Parliament and take elections. He will have control over Parliament.
- Also under the proposed change, power that was not given to Mustafa Kemal Atatürk, is instead given to an individual.



### The 'Yes' Campaign

- Deciding to renew elections is not "dissolution," but is rather a mutually recognized authority.
- During times of crisis or disagreement, this change is considered to be a solution in terms of a democratic mechanism. It is an exceptional power for the president to use, and yet a usual power for Parliament. This is due to the fact that while the president has the right to be elected only twice, there is no such restriction on members of Parliament. This is why Parliament should not be able to make the government unable to work while using this authority. That's why there's a qualified majority. It is thought that three-fifths is a figure that can be reached in times of crisis.
- Additionally there is crisis resolution here due to it pushing one to either negotiate or go to election options. Since the election decision is not an easy task, there is no other way to reach an agreement.

### VOTE OF CONFIDENCE

The government is not directly determined by the people but by Parliament, and a confidence vote has led to coalitions being formed because a single party has often been unable to cross the 276-vote threshold, if you look at our political history. In Turkey's 94-year Republican history, the government has changed 65 times and coalition governments have caused political crises and economic depressions. So, coalitions will be a thing of the past. The government will be established by the president elected by the people.

The presidential system is based on the separation of powers. In accordance with this principle, the government is directly elected by the public. In this regard, the government does not come from Parliament but from the nation itself. Therefore, the vote of confidence is given by the people via democratic election.

○ A response to criticisms on the cancellation of vote of confidence.

### Article 116:

#### Existing rule:

*In cases where the Council of Ministers fails to receive a vote of confidence under Article 110 or falls by a vote of no-confidence under Article 99 or 111, if a new Council of Ministers cannot be formed within 45 days or fails to receive a vote of confidence, the president of the Republic, in consultation with the speaker of the Grand National Assembly of Turkey, may decide to renew the elections.*

#### Proposed Rule:

#### Renewal of elections to the Grand National Assembly of Turkey and for the president of the Republic

*The Grand National Assembly of Turkey may decide by three-fifths majority of the total number of members of the Assembly to renew elections. In this case, the elections to the Grand National Assembly of Turkey and for the president of the Republic shall be held together. In case of a renewal decision taken by the president of the Republic, the aforementioned elections shall be held together. If during the second term of the president, the Assembly decides to renew the elections, the president may once again become candidate. The powers of the Assembly and the president continue until the renewed elections of these bodies.*

## Article 161: Budget and Final Account

### Existing Rule:

Laws on the issue of budget. The Council of Ministers prepares a report regarding the budget and submits a proposal to Parliament.

### Proposed Rule:

Laws No. 161-164 are adjusted according to the presidential system. The president will prepare a proposal for the budget and submit it to Parliament. The budget is approved only by a vote in Parliament.

### The 'No' Campaign

- If the Parliament will not accept the law proposal from the president, the budget would be increased by the rate of revaluation. The legislative body would constitutionally no longer have any political control over the executive body in Turkey.
- Moreover, this proposed amendment goes far beyond the U.S.-style presidential system known for its "hard separation of powers" model, which governs the legislative and executive bodies. The U.S. Congress has the monopoly over granting expenditure to the president through the Budget Law and has effective control over the executive body.
- We have a budget for 80 million people, and the taxes we pay go to the Treasury. They deliver it to a person under this new system.

### The 'Yes' Campaign

- The president's authority to submit law proposals to Parliament is limited to budgetary laws. In all applications in the world, the draft budget is prepared by the executive and submitted for parliamentary approval. Thus, the final decision on the budget belongs to Parliament.
- It will prevent political and economic crises by increasing the budget of the previous year by the rate of revaluation to ensure the continuity of stability. So in the proposed change, it does not leave the country without a budget; one offers the minimum budget, forcing the president to offer a budget that Parliament can accept.
- Additionally the new arrangement favors Parliament. It forces the president to reach an agreement with Parliament because it essentially increases the budget from the previous year per rate of revaluation, making the executive activities of the president more difficult. Thus, Parliament is rendered superior to the executive.



# JUDICIARY



## Article 9

### Existing Rule:

Judicial power is used by independent courts on behalf of the Turkish nation.

### Proposed Rule:

Judicial power is used by independent and impartial courts on behalf of the Turkish nation.

## Judicial Power

### The 'No' Campaign

- The amendment to be made in this article is limited to the wording of the Constitution, and that does not go beyond having a symbolic significance in the face of the spirit of the Constitution, which transforms with the wording of some other provisions of the Constitution.

### The 'Yes' Campaign

- The emphasis on impartiality in the proposal is to eliminate the bureaucratic tutelage system, which was exploited in the past to ban parties, interfere with government policies and even topple governments.
- Adding impartiality to the independence of the courts that will use the jurisdiction within the Turkish legal system and giving constitutional assurance to their basis is a historic step that strengthens the rule of law.

## Formation of Constitutional Court\*

### The 'No' Campaign

- The new system will allow the president to elect 13 of the 15 members of the Constitutional Court, giving the president undue power over one of the branches of state, violating the principle of separation of powers.

### The 'Yes' Campaign

- It is technically impossible for a single president to pick each and every member of the Constitutional Court, as they will be elected for a term of 12 years and the president will serve no longer than 10 years. Additionally, as court members will serve at different intervals, it is impossible for a single president to pick each member before he or she leaves office.

## Article 146:

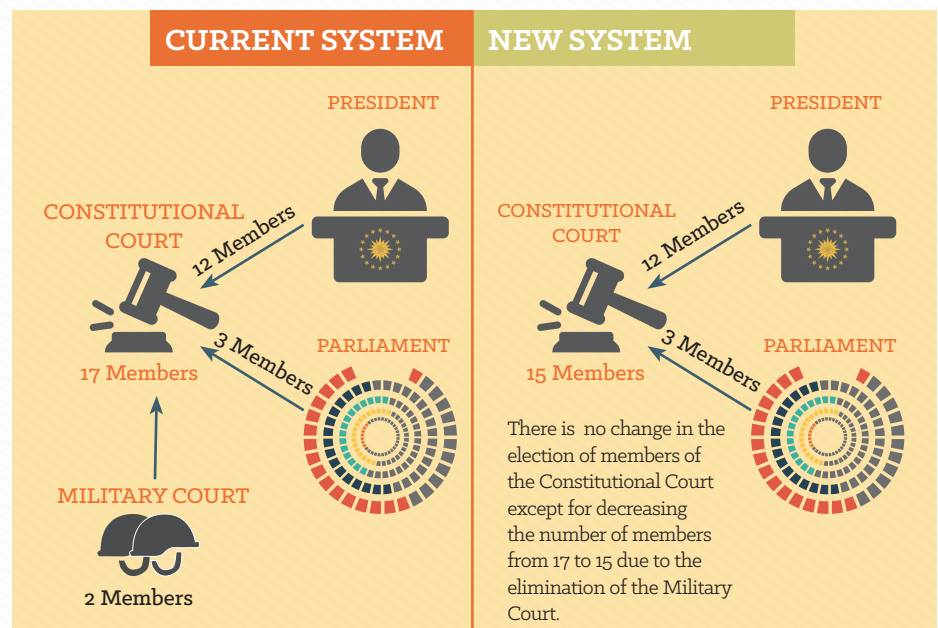
### Existing Rule:

The Constitutional Court shall be composed of 17 members.

### Proposed Rule:

The Constitutional Court shall be composed of 15 members.

## ELECTION OF THE MEMBERS OF CONSTITUTIONAL COURT



\*Like most European Constitutional Courts, it exercises a posteriori control of the consistency of the laws with the Constitution.

## Formation of courts

### The 'No' Campaign

- There is no objection to this article.

### The 'Yes' Campaign

- The civil judiciary alone will be in charge of dispensing justice.
- In the current system, there is the military court of appeals, and the Supreme Military Administrative Court, in addition to civil courts, giving the impression that there are two separate judiciaries and jurisdictions

#### ABOLITION OF MILITARY COURTS

CIVILIAN  
COURTS



MILITARY  
MEMBERS



CIVILIANS



The military members and civilians will be subject to same judiciary.

## Article 142

### Existing Rule:

Setting up courts, their duties and authorities, operation and proceedings are regulated by the law.

### Proposed Rule:

Setting up courts, their duties and authorities, operation and proceedings are regulated by the law. Military courts can only be set up for matters involving military discipline. However, in times of war, military courts can be set up to try soldiers and military officers who committed crimes.

## Article 159:

### Existing Rule:

A law regarding the Supreme Board of Judges and Prosecutors. The board consists of 22 original and 12 substitute members. It has three chambers. Members are elected by judges and prosecutors themselves. The Undersecretary of the Justice Ministry is among the original members.

### Proposed Rule:

#### Council of Judges and Prosecutors

The new name of the board is the following: The Board of Judges and Prosecutors. The number of board members decreases to only 13 members. The number of chambers is down to two. Five members of the board are selected by the president and six of them by Parliament. The remaining member is the Justice Minister. The Undersecretary of the Justice Ministry shall be an ex-officio member of the council.

## High Council of Judges and Prosecutors\*

### The 'No' Campaign

- Within the scope of this proposal, almost every member of the country's highest judicial appointment board will be determined and appointed by the "chairman of the ruling party."

### The 'Yes' Campaign

- Parliament has to elect members by a two-thirds majority of deputies. It will receive the same majority at the commission and will receive a two-third majority at the General Assembly. This shows that a single party does not have the right and the authority to elect any member on its own.
- The Board of Judges and Prosecutors' (HSYK) electoral system that is closed to the national will pave the way for malignant illegal organizations to influence the board and direct the judiciary at their will.
- The public will have a say in the HSYK elections for the first time.

\*The HSYK oversees the curriculum for students of law, admission into the legal profession, as well as the appointment, promotion and disciplining of judges and prosecutors.

# A COMPARISON OF JUDICIAL SUPERVISORY BODIES

## Current System

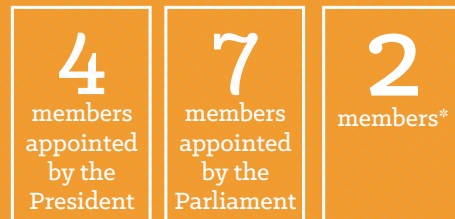
22 Members in total



\* The president of the Council shall be the Minister of Justice. The undersecretary to the Ministry of Justice shall be an ex-officio member of the Council.

## New System

13 Members in total



\*The president of the Council shall be the Minister of Justice. The undersecretary to the Ministry of Justice shall be an ex-officio member of the Council.

## BOARD OF JUDGES AND PROSECUTORS IN EUROPEAN COUNTRIES

### UNITED STATES

#### Judges

There is both a federal and state court system in the United States; Justices of the U.S. Supreme Court and circuit and district judges are appointed by the president of the United States if approved by a majority vote of the U.S. Senate. These justices and judges serve "during good behavior" in effect, a life term. Presidents usually nominate persons to be judges who are members of their own political party.

### SWEDEN

11 Members in total\*

\*All members are appointed by the government.

### GERMANY

Justice Minister is in charge of hiring, firing and promotion of the members of the judiciary.

#### Prosecutors

Prosecutors in the federal system are part of the U.S. Department of Justice in the executive branch. The Attorney General of the United States, who heads the Department of Justice, is appointed by the President with Senate confirmation. The chief prosecutors in the federal court districts are called U.S. attorneys and are also appointed by the president with Senate confirmation.

### NETHERLANDS

5 Members in total\*

\*All members are appointed by the King.

### FRANCE

The Head of State and the Minister of Justice shall be ex-officio members of the Council. The president of the Council is the Head of the State and the Justice Minister is his/her deputy.



# FURTHER ARGUMENTS

## PARTICIPATION OF POLITICAL, CIVIL AGENCIES

### The 'No' Campaign

- It has been alleged that the constitutional amendment proposal was drafted while excluding the public, without the presence of a common social agreement or any consensus among all societal segments.

### The 'Yes' Campaign

- The constitutional reform process must be followed, as long as a sufficient level of reconciliation is achieved.
- Pointing out the fact that all political parties were invited to seek reconciliation back in 2012, the process was kicked off in 2016, with the Nationalist Movement Party's (MHP) call for a limited revision.
- It was also highlighted that a 100 percent consensus was almost impossible in any democracy, and that constitutions have been altered through similar processes elsewhere.
- Even though a 100 percent consensus may be targeted, the constitution can be drafted whenever the highest possible reconciliation is accomplished.

## SYSTEM DISCUSSIONS

### The 'No' Campaign

- The regime will be changed after the constitutional reform since the parliamentary democratic system will be suspended with a one-man regime.

### The 'Yes' Campaign

- Turkey made its regime choice in the year 1923 by declaring the Republic. The Turkish nation does not have such a concern today, as it continues to progress with the step taken in 1923. The constitutional amendment package does not propose any change to the first four articles of the constitution. Therefore, a regime change cannot be on the cards as the first article of the Constitution explicitly reads, "The State of Turkey is a Republic."

## DEBATES ON ONE-MAN RULE

### The 'No' Campaign

- The constitution draft abolishes the democratic parliamentary system and it brings an end to the separation of powers and gather legislative, executive as well as judicial authorities in one body. Therefore, the president will arguably be the only one exercising all the authority, yet such a system cannot be democratic.

### The 'Yes' Campaign

- The one-man regime is far more probable under the current model. Parliament is only a body operating under the command of the executive. Consequently, it is believed that the distinctions among legislative, executive and judicial bodies will be made more explicit with the new system. The proposed presidential system would not allow a one-man regime, as the president only has executive power. The president is only authorized to practice enacted laws. With the new model, though, he/she will have a great deal of responsibilities.

## ADDITIONAL CRITICISMS ON CURRENT PARLIAMENTARY SYSTEM BY THE 'YES' CAMP

- Chaos and crisis would erupt unless the wills of the president and prime minister were in line in every aspect. The new system, however, will repair the shortcomings of the current parliamentary model and be more effective in the governance of the country including legal, executive and legislative bodies.
- Except for some rare exceptions, it is not easy to form a government that completes the entire electoral period in the countries with the parliamentary system. With the constitutional change, the government will be determined following the elections and this government will be effective for five years until the next elections since the nation will directly elect the government in the second round of the elections, if not at the first round. Consequently, it is thought that the system ensures stability in the new model. Even in the absence of a strong political leader, the system is thought to ensure a leader that will run the country in stability.
- George Washington, the first president of the United States, was elected in the year 1789. Within the period of 227 years, Donald Trump took office as the 45th president. But unfortunately in Turkey, a total of 65 governments have been founded in 93 years, between the years of 1923 and 2017. Under normal circumstances, 65 governments are supposed to be formed by the year 2083. From this point, the current system creates problems. Because there have been coalitions, minority governments and bargains for ministerial seats. The processes they created resulted in economic crises and grave outcomes. The country was impoverished by 50 percent and currency rates doubled overnight, and overnight interest rates climbed to around 7,500-8,000 percent. With this alteration in the system, Turkey will enter the top 10 biggest economies in the world, per capita income will increase up to \$20,000-\$25,000, and economic growth and political stability can be accomplished.

## PARLIAMENTARY ERA IN TURKEY

**1876**

Turkey's constitutional tradition dates back to 1876. The Ottoman Empire turned to constitutional monarchy for two years. The Parliament played an advisory role and was dissolved after one year.

**The Republican Period  
1920**

The Grand National Assembly of Turkey was established in 1920 to assume executive and legislative powers.

**1924-1945**

A single-party regime was established by the Republican People's Party (CHP).

**1950-1959**

The Democratic Party won the general election and Turkey's system of government shifted toward multi-party democracy. However it is not demonstrating a real parliamentary system because in democracies, public opinion is resorted to in the presence of political crisis and when the political mechanisms remain short of resolving the crisis. However it led a military coup in 1960.

**1961**

The military junta oversaw the drafting of the 1961 Constitution – which created the guardianship regime to allow the establishment to maintain control over elected officials.

**1973-1979**

There was barely a parliamentary system model. What we witnessed was a parliamentary model basing on tutelage.

**1982**

The 1982 Constitution was drafted under the military junta's supervision and adopted following a referendum.

**2016**

On July 15, a rogue faction within the Turkish Armed Forces with ties to FETÖ, a terrorist group led by U.S.-based criminal Fetullah Gülen, attempted to overthrow Turkey's democratically-elected government. The coup attempt was thwarted as millions of citizens rushed to the streets and peacefully resisted the coup plotters.

**1908**

The second constitutional monarchy period began.

**1923**

The Republic was proclaimed on October 29.

**1946**

Multi-Party Democracy

**1960**

Military coup  
One can hardly call a system a democratic parliamentary one when the resolution of the problem cannot be assigned to political dynamics and the people's will. On May 27, the military overthrew Turkey's democratically-elected government. Prime Minister Adnan Menderes, along with two cabinet ministers, was sentenced to death and executed.

**1971**

The military presented a memorandum to President Cevdet Sunay and removed the elected government from power. An interim government was formed under CHP deputy Nihat Erim to govern the country for the next two years.

**1980**

On September 12, the military perpetrated a coup d'état – the third in the Republic's history.

**1997**

The military made a series of 'recommendations' to the coalition government led by the True Path Party (DYP) and the Welfare Party (RP) at a meeting of the National Security Council on February 28. Prime Minister Necmettin Erbakan was forced to resign and the government was removed from power.



## PARTIES' POSITION ON APRIL 16 REFERENDUM



## TURKEY'S NOVEMBER 1, 2015 ELECTION RESULTS

Party Name	Vote		Position	Referendum Vote
	Number	%		
Justice and Development Party (AK Party)	23,681,926	%49,50	Conservative Center-right	YES
Republican People's Party (CHP)	12,111,812	%25,32	Secularist Center-left	NO
People's Democratic Party (HDP)	5,694,136	%11,90	Pro-PKK Kurdish Left-wing	NO
Nationalist Movement Party (MHP)	5,148,085	%10,76	Nationalist Right-wing	YES
Felicity Party (Saadet)	325,978	%0,68	Islamic	NO
Great Union Party (BBP)	253,204	%0,53	Nationalist Right-wing	YES
Patriotic Party (Vatan Partisi)	118,803	%0,25	Nationalist Left-wing	NO
Rights and Freedom Party (HAK-PAR)	108,583	%0,23	Right-wing	NO
Communist Party (KP)	52,527	%0,11	Far Left-wing	UNANNOUNCED
Free Cause Party (HÜDA PAR)			Islamic Kurdish Right-wing	YES

In the most recent parliamentary election,

- Political parties endorsing the constitutional amendments received 60.79% of the vote.
- Political parties opposing constitutional reform won 38.38% of the vote.

Recep Tayyip Erdoğan became the first directly-elected president of Turkey on Aug. 10, 2014 by receiving 51.79 of the votes cast.



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