

# Turkey's April 16 Referendum Choice: 'Yes'

APRIL 2017



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## INTRODUCTION

On April 16, 2017, the Turkish electorate was asked whether they wanted to transform the system of government into a presidential one and the majority answered in the affirmative. As many as 51.4 percent of the people voted “YES” to the constitutional changes needed, while 48.6 percent voted against. The last few months saw supporters of both sides campaign to their heart’s content, turning the country’s streets into mobile debating platforms, where, apart from a few isolated instances, people were free to propagate whatever they believed.

Until 2014, the president, the head of state, was selected by Parliament, usually after much negotiation among party leaders. There were times when parties were incapable of agreeing on a particular individual, resulting in deadlock. The 1980 military coup came after the Parliament of the day could not choose a president after 124 rounds of voting.

The president was an official without any political mandate and without any executive authority but with enough power to hamper actions taken by the executive branch, headed by the prime minister. The 1982 Constitution, drawn up under the supervision of the coup leaders, essentially transformed the post of the president as a check to the power of the elected politicians. In the 1980s, Kenan Evren, the head of the coup, took over the post and made sure the elected government did not stray too far from the narrow confines set by the military. The judiciary, as well, was structured in a way to clamp down on any initiative from elected officials. No wonder, when politicians Turgut Özal and Süleyman Demirel became presidents in the 1990s, seen as “the lost decade,” the era was fraught with political infighting and one crisis after another. This experience fostered the belief that presidents need to be chosen from outside the political establishment.

Ahmet Necdet Sezer, a retired judge, proved this wrong. Chosen by the party leaders, Sezer

first instigated a constitutional crisis with the coalition government, which was the trigger for the devastating 2001 economic crisis, and after the collapse of the coalition and the founding of the Justice and Development Party (AK Party) government in late 2002, was known more for becoming an obstacle to many government policies.

After the crisis over the election of the president in 2007, with the military openly warning against the election of the AK Party’s candidate, Abdullah Gül, a constitutional amendment was made to allow the election of the president directly by the people. This also removed the risk of a possible parliamentary deadlock.

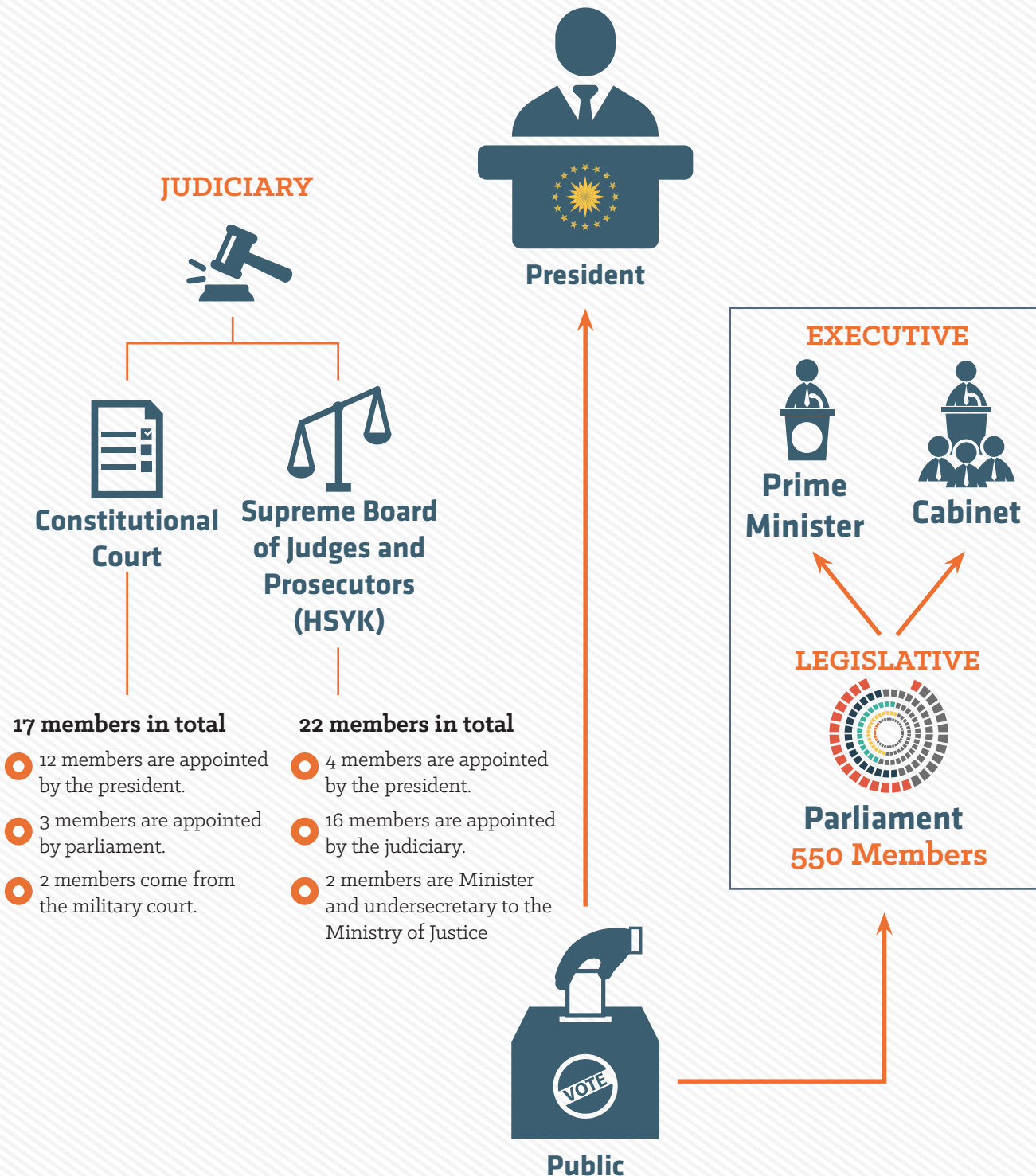
Recep Tayyip Erdoğan became the first directly elected president in the history of the Republic in 2014. However, this created a difficult quandary, where both the president and the prime minister had a clear public mandate with considerable powers.

Amendments approved on April 16 fuse the posts of the president and the prime minister to allow for a more functioning, streamlined and effective governing mechanism with the legislative branch and the judiciary acting as checks. The governability defect inherent in the former system prevented parties that were elected by the people to properly work, forcing many leaders to spend more time politicking rather than governing. It is no surprise that only during one-party governments that Turkey made significant economic and social progress while multi-party governments produced nothing but stagnation and disorder. The presidential system is crucial for the execution and maintenance of the many democratic, social and economic reforms Turkey desperately needs but cannot execute due to the constant parliamentary logjam.

This booklet is a technical summary of the new system of government, which will be instituted within the next few years, and a comparison with the one it replaces.

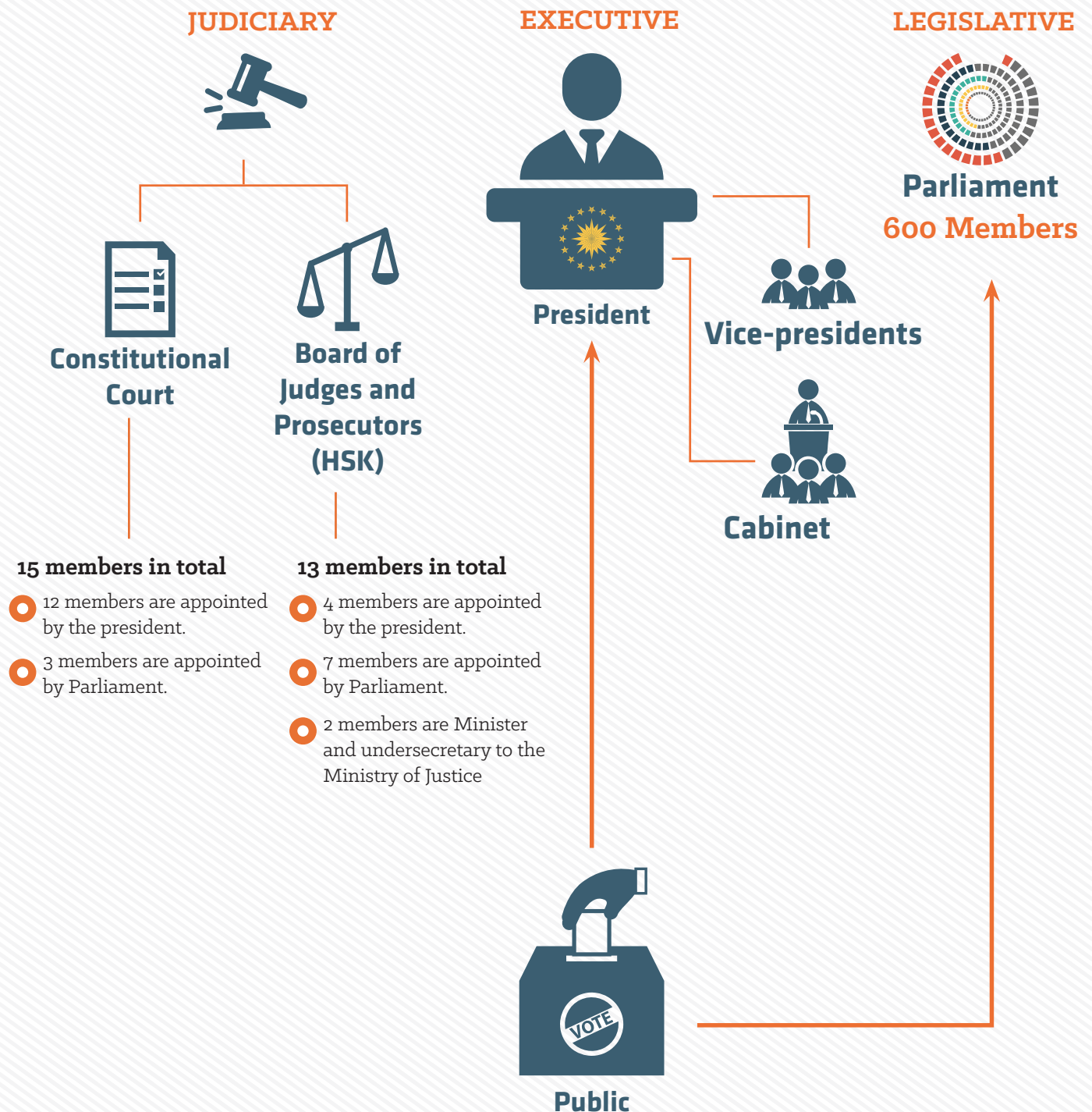
## SEPARATION OF POWERS

### PREVIOUS SYSTEM



## SEPARATION OF POWERS

### NEW SYSTEM









# LEGISLATIVE BRANCH

## — Article 75: —

### Composition of the Grand National Assembly of Turkey

#### Former Rule

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

#### Adopted Rule

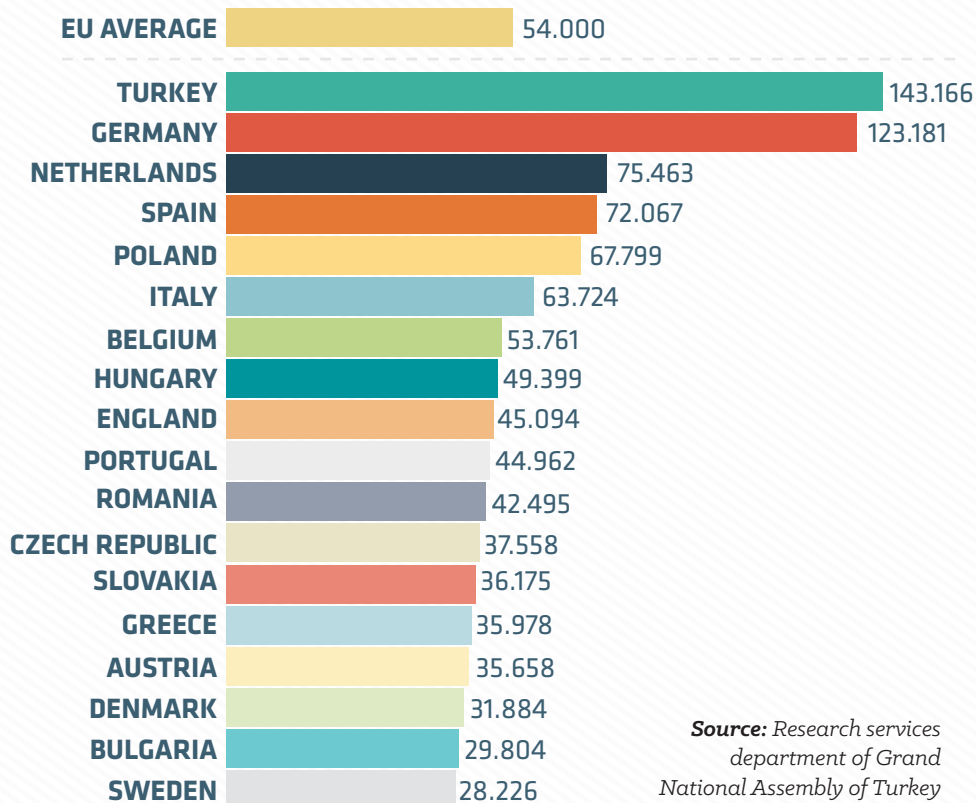
The Turkish Grand National Assembly consists of 600 deputies elected in general elections.

#### Reason of change

- 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 34 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.
- To make sure that voters are fairly represented in Parliament, the voter-to-deputy ratio must remain at a certain level. The amendment will make the legislative branch more representative of the electorate.
- 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. This strengthens the separation of powers and moving forward, there may not be 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.



#### POPULATION PER DEPUTY



Source: Research services  
department of Grand  
National Assembly of Turkey



## — Article 76: —

### Constitutional Qualifications for Parliamentarians

#### Former 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.

#### Adopted 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.

#### Reason of change

- 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.



#### 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: —

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

#### Former Rule

Parliamentary elections are held every four years.

#### Adopted Rule

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.

#### Reason of change

- 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 New System of Government in Turkey

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.



## — Article 87: —

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

#### Former Rule

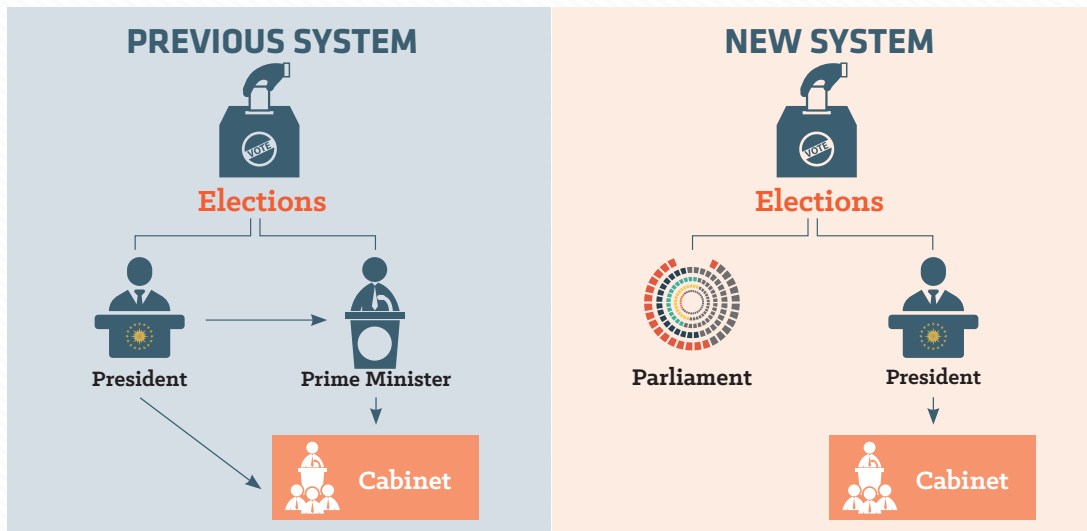
The article provides a list of the Parliament's powers and responsibilities, such as monitoring the Cabinet and cabinet ministers, granting the Cabinet the power to issue decrees and monitoring draft budgets.

#### Adopted 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.

#### Reason of change

- 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.



## — Article 98 —

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

#### Former 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.

#### Adopted 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.

#### Reason of change

- 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.







# EXECUTIVE BRANCH

## — Article 101 —

### Nomination and election of the President of the Republic

#### Former 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.

#### Adopted Rule

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.

#### Reason of change

- 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.
- Voters may elect president and deputies from different parties. It strengthens checks and balance mechanism between powers. 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.
- 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 NEW SYSTEM OF GOVERNMENT, THE PRESIDENT WILL PERFORM THREE FUNCTIONS



Represents  
the state  
(Head of State)



Governs  
(Head of  
Government)



Maintains relations with  
his own political circles  
(Political Figure)

#### 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.**



## — Article 105 —

### The President's criminal liability

#### Former 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.

#### Adopted Rule

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.

#### Reason of change

- 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 previous 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.
- 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.

PREVIOUS 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.	A charge can be brought against the president before parliament with a motion accepted by the
	absolute majority of deputies
	<b>301 out of 600</b>
	Parliament can also launch an investigation into the President's actions with
	three-fifths of the parliament
	<b>360 secret votes</b>
The president also does not have any judicial or penal responsibility.	
	The President can be investigated and referred to the Supreme Court with the support of
	deputies
	<b>400 out of 600</b>
The president can only be charged for treason with a vote by 413 out of 550 deputies	
<b>413 out of 550</b>	
deputies	

## — Article 104 —

### The President's Duties and Powers

#### Former Rule

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

#### Adopted Rule

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

#### Reason of change

- Cabinet decree, which exists in the previous 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.
- 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.
- 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.



#### ADOPTED 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.

## — Article 104 —

### The President's Duties And Powers

#### Former Rule

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

#### Adopted Rule

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

#### Reason of change

#### DISCUSSIONS ON FEDERALISM

- 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.



#### 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 the State Supervisory Body
- Establishment of public, legal entities based on service, such as the Southeast Anatolia Project (GAP), the Thracian Irrigation Association and the Antalya Tourism Association
- Regulation of ministry organization
- Ability to determine the procedures and guidelines of senior management appointments
- 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 —

### Vice Presidents and Ministers

#### Former 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.

#### Adopted 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.

#### Reason of change

- The 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.
- 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.



## — Article 119 —

### Administration of States of Emergency

#### Former 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.

#### Adopted 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.

#### Reason of change

- 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.

## — Article 116 —

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

#### Former 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.

#### Adopted Rule

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.


#### Reason of change

- 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 the vote of confidence.



## — Article 161 —

### Budget and Final Account

#### Former Rule

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

#### Adopted 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.

#### Reason of change

- 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 adopted 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 — Judicial Power

### Former Rule

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

### Adopted Rule

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

### Reason of change

- 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.

## — Article 146 — Formation of Constitutional Court

### Former Rule

The Constitutional Court shall be composed of 17 members.

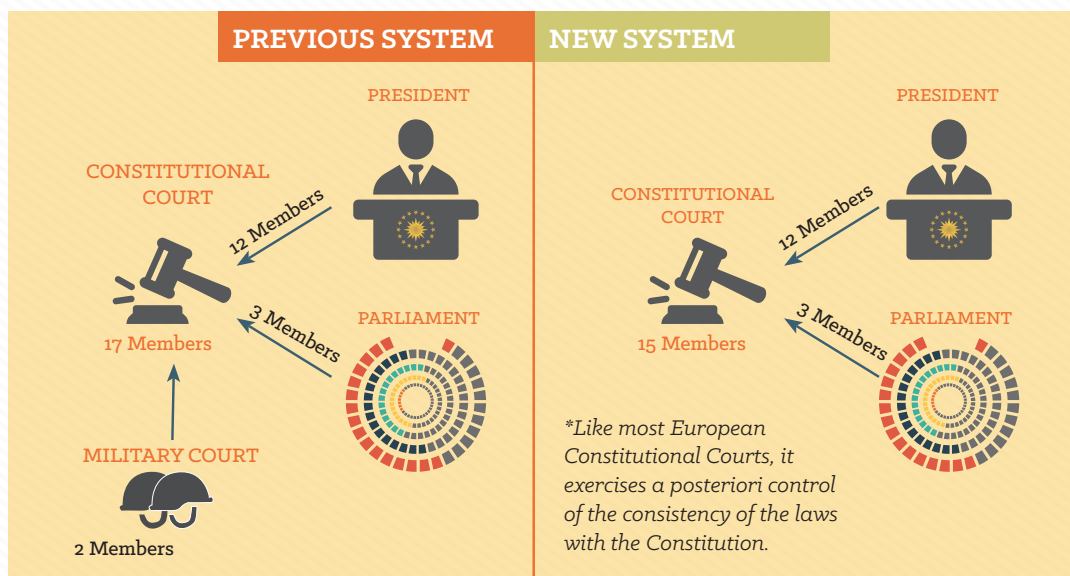
### Adopted Rule

The Constitutional Court shall be composed of 15 members.

### Reason of change

- There is no change in the election of members of the Constitutional Court except for decreasing the number of members from 17 to 15 due to the elimination of the Military Court.

### ELECTION OF THE MEMBERS OF CONSTITUTIONAL COURT\*



- 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 142 —

### Formation of courts

#### Former Rule

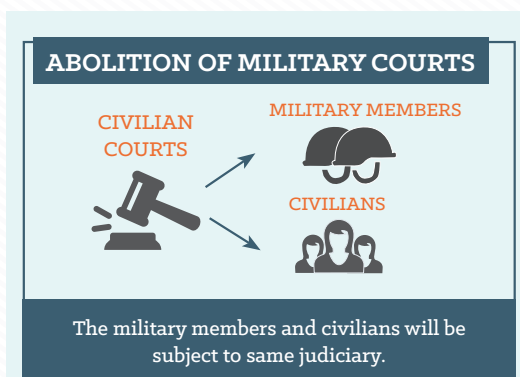
Setting up courts, their duties and authorities, operation and proceedings are regulated by the law.

#### Adopted 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.

#### Reason of change

- The civil judiciary alone will be in charge of dispensing justice.
- In the previous 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



## — Article 159 —

### Council of Judges and Prosecutors\*

#### Former Rule

A law regarding the Supreme Board of Judges and Prosecutors (HSYK). 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.

#### Adopted Rule

The new name of the board is the following: The Board of Judges and Prosecutors (HSK). 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.

#### Reason of change

- The Supreme 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.
- 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 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

## Previous System

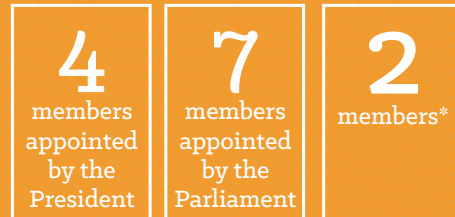
22 Members in total



\* 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.

#### 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.

### 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.

### 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.

## ADDITIONAL CRITICISMS ON PREVIOUS PARLIAMENTARY SYSTEM

- 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.

# FURTHER ARGUMENTS



## SYSTEM DISCUSSIONS

- 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 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.

## PARTICIPATION OF POLITICAL, CIVIL AGENCIES

- The constitutional reform process must be followed, as long as a sufficient level of reconciliation is achieved.
- 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.
- 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.
- Even though a 100 percent consensus may be targeted, the constitution can be drafted whenever the highest possible reconciliation is accomplished.





## APRIL 16, 2017 REFERENDUM RESULTS

The April 16 referendum asked voters to say “Yes” or “No” to an 18-article bill that would see the country switch from a parliamentary government system to a presidential one, among other changes.

**YES**

**51.41%**

**25.157.463**  
votes

**NO**

**48.59%**

**23.779.141**  
votes

Voter turnout

**85,43%**

TOTAL NUMBER  
OF VOTERS

**58.291.898**

TOTAL  
VOTES

**49.798.855**

VALID  
VOTES

**48.936.604**

INVALID  
VOTES

**862.251**

The bill gives a transitional period to the country within the aim to adopt necessary legislation until the next election that will take place on Nov. 3, 2019. The changes related to the presidential system will be enacted after Nov. 3, 2019.







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