

GEDİK & ERAKSOY

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Primer on Constitutional Amendment Process

*The Justice and Development Party submitted to the Parliament a bill (**Bill**) envisaging amendments to the Turkish Constitution, published in the Official Gazette No. 17863 dated 9 November 1982 (as amended from time to time, **Constitution**). The proposed amendments introduce a great deal of novelties to the Constitution, including, but not limited to, a change of Turkey's current government system. This brief note seeks to provide high-level guidance as to the procedural steps that need to be taken as per the Constitution in order for the Bill to amend the Constitution.*

Article 175 of the Constitution sets out the procedure for amendments of the Constitution. Accordingly, amendments must be proposed, in writing, by, at least, one-third of the total number of members of the Grand National Assembly of Turkey (*Türkiye Büyük Millet Meclisi*), *i.e.*, 184 MPs. The actual amendment proposal gathered the support of 316 MPs.

Further, proposals to amend the Constitution must be debated twice in the Plenary Session. To be adopted, such proposal for amendment requires the affirmative votes of three-fifths (*i.e.*, 330) out of the total number of members of the Parliament, *i.e.*, 550 MPs. The votes should be cast by secret ballot.

If the decision quorum, a three-fifths majority of the total number of members of the Parliament (*i.e.*, 330 MPs) is not reached, then the bill shall be deemed to have been rejected without any need for further action.

Subject to the President's right to refer the bill to the Parliament for further consideration, if the Parliament adopts the bill with the affirmative votes of two-thirds of the total number of members of the Parliament (*i.e.*, 367 or more votes), the President may, at his discretion, refer the bill to a referendum or approve the bill. If the President approves the bill, amendments enter into force as of its publication in the Official Gazette.

If the bill is adopted with, at least, 330 votes, but with less than 367 votes, and is not referred by the President to the Parliament for further consideration, then the bill shall be published in the Official Gazette and shall be submitted to a referendum to be held, at the latest, within 60 days as of its publication in the Official Gazette.

As of the date hereof, both rounds have been completed with the affirmative votes of more than 330, but less than 367 MPs. Therefore, the Bill envisaging amendments to the Constitution was adopted by the Parliament. Unless the President refers the bill for further consideration to the Parliament within 15 days, amendment to the Constitutional (**Constitutional Amendment**) will be published in the Official Gazette upon the President's approval thereof.

It has been reported that the main opposition party, the People's Republican Party (CHP), has been preparing a lawsuit for the annulment of the Constitutional Amendment by the Constitutional Court as per Article 150 of the Constitution. The prescribed time limit for this action is, at the latest, ten days from publication of the Constitutional Amendment in Official Gazette.

In the event of annulment proceedings being initiated, the Constitutional Court's review shall be limited to evaluation of the Constitutional Amendment's compliance with formal requirements in respect of the Constitutional Amendment. These formal requirements are enumerated in Article 148 of the Constitution as (i) quorum for proposal; (ii) decision quorum; and, (iii) compliance with the 48-hour cool-off period between first and second rounds of debate in the Plenary Session.

As per Article 149 of the Constitution, the Constitutional Court is obliged to assess and resolve promptly and primarily on annulment actions relating to constitutional amendments. The Constitutional Court is composed of 17 members including the President of the Constitutional Court. Whereas the meeting quorum of the Constitutional Court is 12 members plus the President of the Constitutional Court, the decision quorum in respect of annulment of amendments to the Constitution is two-thirds of the participating members of the Constitutional Court , *i.e.*, 9 or 10 members depending on the participation.

The leader of the main opposition party, CHP, announced, on 21 January 2017, that the CHP will base its action on a breach of the secret ballot requirement. Although the secret ballot requirement is not stipulated explicitly as among the grounds for review of constitutional amendments, the Constitutional Court may, by way of interpretation, conclude that the secret ballot requirement falls within formal requirements that qualify for a review.

In the event of submission to referendum, the constitutional amendment shall require the approval of more than half of the valid votes cast.

The Turkish Grand National Assembly, in adopting the laws related to the Constitutional amendment, shall also decide on which provisions shall be submitted to referendum together and which shall be submitted individually. This is also important due to potential concerns in respect of omnibus bills.

In conclusion, the timeline for the constitutional amendment will take shape according to the foregoing possibilities.

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POTENTIAL SCENARIOS AS OF THE DATE HEREOF

