

Recent amendments to Turkish Constitution

On 16 April 2017, a constitutional referendum was held in Turkey as to whether to approve 18 proposed amendments to the Turkish Constitution. According to the official results declared by the Supreme Electoral Council (YSK), 51.41% of the voters cast their votes in favour of the proposed amendments to the Turkish Constitution. As a result, Law No. 6771 on Amendments to the Constitution (the Amendment Package) was accepted.

The Amendment Package entered into force upon the inauguration of the President on 9 July 2018, earlier than the initially scheduled deadline, which was 3 November 2019 and it creates major changes to various different sections of the Turkish Constitution, including, among other things, the exercise of legislative powers, preparation of the annual budget and the composition of certain courts.

Major Amendments

Although it was originally due to enter into force in its entirety upon inauguration of the president and the MPs elected on 3 November 2019, the elections that were held on 24 June 2018 accelerated the process for implementation of the Amendment Package, and therefore, Turkey's shift to the presidential system.

In the aforesaid elections, the incumbent President was re-elected with approximately 52.6% of the votes, and the Amendment Package entered into force in its entirety as of the inauguration of the President on 9 July 2018.

The amendments, which would have major legal impacts on Turkey's constitution and administrative laws, are as follows:

(a) Abolition of the office of Prime Minister and the Council of Ministers

In connection with the transition to the presidential system, the office of the Prime Minister and the Council of Ministers, which have active roles in the parliamentary system, were both abolished and the executive functions thereof were transferred to, and assumed by, the President.

(b) Status of the vice-president(s) and ministers

According to the Amendment Package, the President will be assisted by one or more Vice-Presidents to be appointed by himself/herself. The President will have the power to appoint cabinet ministers without requiring a confidence vote from the Parliament. Under the presidential system, ministers

will not be responsible to the Parliament. Indeed, the ministers' (and the vice-presidents') role would be administrative.

(c) Presidential decrees

In addition to the legislative power, which is primarily used by the Parliament, the President can also issue presidential decrees regarding his or her executive power. However, certain fundamental rights, personal rights and duties, and political rights and duties that are protected and governed under the Constitution cannot be subject to presidential decrees.

Similar to laws, presidential decrees may also be subject to a constitutionality review by the Constitutional Court. The interplay between laws issued by the Parliament and the presidential decrees issued by the President as well as the scope of applicability of the presidential decrees has yet to be observed.

(d) Promulgation of laws

Previously, if the President referred a bill back to the Parliament for re-consideration, the Parliament could approve the bill with a simple majority (i.e., a majority of MPs present in the Parliament) and the President was required to approve the re-considered bill and promulgate the law.

Following the Amendment Package, however, if the President refers a bill back to the Parliament, the Parliament is required to approve the bill with a qualified majority (i.e., a majority of all MPs in the Parliament).

(e) Preparation and approval of the annual budget law

As opposed to the parliamentary system where the annual budget law was prepared by the Parliament, the budget law will, under the presidential system, be drafted by the President and submitted to the Parliament for approval.

If the budget so submitted is not approved by the Parliament, a temporary budget law must be issued. In case even a temporary budget law cannot be issued, the previous year's budget to be increased by applying the revaluation ratio will continue to be in force for the next budget year until the issuance of the new budget law.

(f) Elections

Elections can be called with either three-fifths of the parliamentary majority vote or by the President. In either case, the elections for President and for MPs will be held at the same time. That being said, in its normal course, elections are to be held every five years.

(g) Impartiality of the President

As opposed to the parliamentary system where the President must be impartial and without party favour, under the presidential system, the President can be a member of a political party.

(h) MPs

Under the presidential system, the number of MPs rose to 600 from 550 and the age limit for election as an MP lowered to 18 from 25.

(i) Composition of certain courts and judiciary bodies

According to the Amendment Package:

- the number of members of the Constitutional Court is decreased from 17 to 15. Otherwise, the composition of the Constitutional Court will remain the same, with 12 of its members being appointed by the President and 3 of them by the Parliament;
- military courts are abolished and can no longer be established except for military disciplinary cases. Military courts can only be established in cases of military personnel committing crimes at times of war; and
- the Council of Judges and Prosecutors will be composed of 13 regular members (it was previously composed of 22 regular members and 12 substitutes) and will be comprised of two chambers (previously there were three). The Minister of Justice is the head of the Council of Judges and Prosecutors and the Undersecretary of the Ministry of Justice is its permanent member. Four members of the Council of Judges and Prosecutors are appointed from among serving judges and prosecutors by the President and the remaining seven members are appointed by the Parliament.

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