



Strasbourg, 22 February 2017

CDL-REF(2017)015

Opinion No. 875/ 2017

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TURKEY

MINISTRY OF JUSTICE
DIRECTORATE GENERAL FOR EU AFFAIRS

INFORMATION NOTE
ON THE ISSUES TO BE HANDLED IN THE VISIT
OF THE VENICE COMMISSION REGARDING
THE CONSTITUTIONAL AMENDMENTS
(20-21 FEBRUARY 2017)



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I. INTRODUCTION

The Republic of Turkey is a state of law devoted to universal values such as democracy, human rights and the rule of law. Article 1 of the Constitution stipulates that the form of the State is Republic while Article 2 explains the characteristics of the Republic and emphasizes that the Republic of Turkey is a democratic, secular and social state governed by the rule of law.

As it is known, parliamentary, semi-presidential and presidential systems are implemented as the forms of democratic States, according to historical, social and cultural structures of the countries. In other words, there is no standard or ideal system of government in democracies. In today's world, the level of dependence of the system on democracy and human rights is more important than the form of the State implemented in a country.

Certain developments and crisis that have been survived primarily play a significant role in the determination of the forms of government. Turkish society has tried adapting to different forms of government since the foundation of the Republic of Turkey and has focused its efforts on carrying its democracy to the contemporary civilization level. Within this framework, the "one-party system" was implemented in the earlier years of the Republic and parliamentary system was adopted later. 65 governments have been formed within 94 years since the foundation of the Republic in 1923. Turkish democracy has suffered from several military coups, coup attempts and economic and political crisis. The implementation of presidential government system has been frequently discussed on political and academic platforms since the 1970s.

Especially the constitutional amendment introduced upon the political crisis arising in the presidential elections in 2007 led to the adoption of an election procedure regulating the election of the President directly by the public. In fact, this development transformed the government system into a sort of "semi-presidential" system and approximated it to the "presidential system". As a matter of fact, the head of State is elected by the parliament in the parliamentary government model. Disputes and disagreements may arise between the publicly-elected President who has broad authority under the Constitution and the Prime Minister who is considered as the head of the executive power in the parliamentary system. As of the current situation, the withdrawal of the right to vote granted to the public will not comply with the democratic practices. The "presidential government system" introduced by the constitutional amendment aims at preventing the potential political crisis and carrying Turkish democracy to a higher level.

II. MOTIVES NECESSITATING THE AMENDMENT

1. The 1982 Constitution encompasses a systematic conflict

The 1982 Constitution grants broad duties and authority which do not comply with the parliamentary model and deems the President authorised and competent within the executive power (Articles 8 and 104 of the Constitution). On the other hand, it also envisages that the President is held non-accountable (Article 105 of the Constitution).

However, in parliamentary systems, the President is a non-accountable authority that has no powers other than his/her symbolic and representative powers which represent the integrity of the country and the nation. The government which is accountable to the parliament and the Prime Minister as the head of the government constitute the main determinant of the domestic and international politics.

The military government drafting the 1982 Constitution provided the President with strong authority and was consciously deviated from parliamentary system. According to the Article 8 of the 1982 Constitution, the executive power is exercised by the President and the Council of Ministers. The powers granted to the "President" and the "Council of Ministers" are separately enumerated and a dual authority is envisaged under Chapter II titled "Executive power" in the Constitution.

The head of State designed by the military government had a position beyond what is symbolically foreseen in the parliamentary system and had a position above the parties which would act as a strong tutelary over the elected state organs. It was aimed that this position would not be filled by a political person but preferably by a former military member or a civilian approved by the military.

2. Presidential Elections remind Turkish people of crisis

The presidential elections before and after the 1982 Constitution in Turkish political history are remembered by crisis, memoranda, coups and communiqués. Due to the fact that candidate presidents were deterred by threat from running in the elections, any kind of manoeuvres were used in order to prevent the Assembly from electing a President, efforts were made to prevent the elections by means of legal scandals and the presidential elections were shown as the motive of the coups on the pretext that the political institution could not elect the President when there was no compromise on the candidate who would act as the tutelary of those elected.

3. The results of the 2007 Referendum solved the problem of presidential election but led to a dual authority

Before the election of the 11th President, the Assembly of that time could not elect the President upon the pressure of 367 votes as a result of the April 27 e-memorandum of the military tutelage, which was recorded in the history of the judiciary as a negative development upon the decision of the Constitutional Court. A constitutional amendment was inevitable both to renew the general elections and to prevent similar crisis.

As a result of the referendum held in this respect, the procedure regulating the election of the President by the public was adopted upon 69% affirmative votes.

Sharing the executive power with Prime Minister and ministers, the President strengthened his/her social and political legitimacy as a result of the election procedure envisaged by the constitutional amendment in 2007. This dual legitimacy brought about a more distinctive dual authority in terms of the exercise of the executive power.

Having gained strong social and political legitimacy through direct popular votes, the President could exercise the broad authority without any legal or political responsibility, which might lead to significant political crisis, controversy and conflicts in the future, if not today. The constitutional amendment drafted offers the possibility to remove the entire controversy.

The most important problem is that the current system cannot respond to the instability of government, thus to political instability.

Unlike the Western democracies, the 1982 Constitution opted for broadening the authority of the President rather than strengthening the executive power in favour of the Prime Minister and the Council of Ministers that constituted the responsible part of the executive power.

4. The Constitutional amendment in 2007 approximated the government system to the presidential system

The government system was transformed into a "semi-presidential system" and approximated to a "presidential system" as a result of the duties and powers granted to the President in the Constitution and the popular voting. Having regard to democratic practices and ordinary course of life, the process is inclined towards the presidential system since there was no turnaround from this amendment approved by the public. Upon the constitutional amendment, the "Presidential Government System" is now submitted to the appreciation of the public in order to complete the process initiated in 2007.

5. Turkey's problem is not a regime but a government system problem

The Republic is the most precious acquisition that the Nation has and the regime of the country is a democratic Republic. The regime includes the nature and structural feature of the State according to the right of sovereignty. The form of the State is the Republic and the characteristics of the Republic is that it is a democratic, secular and social state governed by the rule of law and its structural feature is that it is an indivisible entity with its territory and nation, thus a unitary state.

The rumours of "regime change with the constitutional amendment" do not reflect the reality; the mentioned constitutional amendment does not introduce any regime change, it includes changes only with respect to the government model. The backbone of the legal regulation does not concern the regime of the Republic but the government model. This model is defined as "Presidential Government System".

In democratic states, there are generally three government models, namely parliamentary, semi-presidential and presidential models. The government systems-models are not prototypical. Taking into consideration the international and national practices and having regard to the experiences and practices of the past, States form the positive rules regarding the embodiment of the national sovereignty. In this respect, it is considerably appropriate to name the executive model as "Presidential Government System". The President is the head of the State. It is the Nation which builds the executive instrument called State. The President of the Republic means the head of the Public - Nation.

The most distinct characteristic of democracy and the Republic is that the legislative, executive and judicial powers are independent from each other. In other words, the principle of "separation of powers" that we all agree on is prevalent. The "separation of powers" system is poorly implemented in the parliamentary system since the executive power is formed from within the legislative power. The presidential system where the executive and legislative powers are elected separately is the most suitable system to the principle of "separation of powers".

6. Dual Authority in the executive power is lifted and a potential state crisis is prevented

The most important feature of the constitutional amendment is that it lifts the dual authority in the executive power. Due to the election of the President by popular vote, he/she is politically responsible in the eyes of the nation. This amendment removes the potential of State crisis between the President on one side and the Prime Minister and the Council of Ministers on the other side which might arise from the broad executive authority of the President. Turkish democracy has witnessed several negative examples in its history. For example, the rising tensions between President Ahmet Necdet Sezer and the late Prime Minister Bülent Ecevit in 2001 damaged the economy of the country to a great extent and led to political and social crisis.

According to the constitutional amendment, the executive power will only belong to the publicly-elected President. The President will exercise this power with the deputy presidents and the ministers appointed by himself/herself among the members of parliament or outside the parliament. However, if the deputy presidents or the ministers are appointed among the members of parliament, their Parliamentary membership will end.

The legislative power will only belong to the Assembly. The President will not be authorized to put forward a law proposal. A more suitable government system is envisaged with respect to the principle of "checks and balances" since the legislative power is completely separated from the executive power.

The President who is elected by the public and holds the executive power and the Prime Minister who is also elected by the public and is at the head of the executive power are like two people in the drivers' seat of a car. In case they have different political inclination or do not have harmony between each other, it will be inevitable that this car will go towards different directions. Unfortunately, there is no solution envisaged for such cases in the current/present Constitution. The proposed 'Presidential Government System' will solve such problems as well.

The President has political responsibility to the people who elect him/her. That the President exercises the executive authority enshrined in the Constitution does not look familiar since the former Presidents have never had used these powers. This has led to criticism about a "de facto" situation in certain circles. Whereas it is not a de facto situation, it is the exercise of the authority derived from the current Constitution. Furthermore, the right of the President to be elected for the second term granted under the constitutional amendment in 2007 ensures that the President is authorised to introduce practices and even imposes an obligation to perform.

7. The Assembly is Further Strengthened in the Presidential Government System

The Assembly is further strengthened in the 'Presidential Government System'. The President is envisaged to be an elective authority who could execute related duties within the framework of the laws put into force by the Assembly and serve the public limited to the budget approved by parliament. In the system brought, TGNA is the sole legislative authority. The authority to put legislation in the system is in the monopoly of the TGNA. The Assembly may, if it deems necessary and appropriate, make regulations on the area or the issue regulated by the Presidential Decree.

In such a case, the Presidential Decree becomes null and void. Briefly, the superiority of making regulatory norms is in the monopoly of the Assembly.

8. The Model Accepted in the TGNA Will Remove the Problem of Government Formation Failure and Provide Stability in Governance

Due to the parliamentary government system in our multi-party democratic political life, there had been a government for every 1,5 years, except for 15 years AK Party period. This situation leads to political instability and economic crises, the economic crises trigger security problems, security problems strengthen the institutions of tutelage, the tutelage conception leads to coups at certain intervals and weakens our democracy. In the "Presidential Government System", on the other hand, there is no possibility of coalition, there is stability. Stability is the base of development, growth and prosperity.

9. The New System is Based on Accountability

The essence of democracy is to take accountability as a basis. According to the current Constitution, the president has no responsibility even though he has many duties and authorities.

Actually, title of article 105 of the Constitution is as 'accountability and non-accountability' and it is underlined that he/she is not accountable except for the 'treason'. By the amendment proposal, this article has been changed together with its title. Hereinafter, title of article 105 will be as 'Criminal Liability of the President'. If the Constitutional amendment is approved by the Nation, the president will be accountable not only for his executions, actions and operations, but also for his/her inaction.

10. Independence and Impartiality of Judiciary has been Strengthened

Significant changes are also being made in the judiciary field with the Constitutional amendment. First of all, a strong emphasis is made on the impartiality of the judiciary by adding the expression "impartiality" to the judiciary 'independence' principle. In particular, the changes made in the structure and electoral procedure of the HCJP and the complete abolition of military courts are important steps for Turkish democracy to ensure independence and impartiality of the judiciary.

Before the Constitutional amendment in 2010, the HCJP members were selected by the President from among the members of the Court of Cassation and the Council of State according to a certain procedure. The role of the President in determining the members of the HCJP has been criticized for some reason, such as the absence of any influence of the parliament. With the Constitutional amendment made in 2010, the system was revised in such a way that the vast majority of its members are to be determined by an election from among judges and prosecutors serving in first instance courts. While the legislator wanted the HCJP to have a pluralistic structure, the Constitutional Court's cancellation in the article related to the election procedure resulted in the election system becoming a list procedure, the organized structures exploiting the electoral system and seizing the majority in the HCJP. In addition, elections between judges and prosecutors led to the emergence of competition, and thus political, religious and ethnic sub-identities to become visible. This situation has resulted in the damage of trust to the judiciary in the society.

In addition to all of these, a terrible fact emerged concerning that Fetullahist Terrorist Organization (FETO), which is an organized structure, has had secretly seized the majority of the members of the HCJP by exploiting the democratic system. In the meantime, FETO used judiciary as a tool to seize all state organs. FETO member judges and prosecutors have been assigned to the courts, like special courts, which are of great importance for the security of the country. With the help of these courts, FETO, liquidated all the opposing staff, especially in the Turkish Armed Forces and the Police Department, and opened the way for their own staff. FETO, which eventually felt themselves strong enough, tried to overthrow democratically elected government on 17-25 December 2013 by using courts, prosecutor's offices and the police force. Due to the current government's struggle against this terrorist organization and the measures it took in the frame of the rule of law, FETO could not reach its goal, but it continued its attacks by continuing to exploit the democratic system. Eventually, on 15 July 2016, FETO attempted a bloody coup d'état by using its members in the Turkish Armed Forces who had been secretly and systematically placed into for many years. Turkey has faced the danger of civil war and chaos. The coup attempt could have been prevented by the resistance of Turkish people at the cost of their lives.

As a result of the above-mentioned bitter experiences faced by the society, the systematic changes in the structure of the HCJP have become compulsory. The aim of the change in the structure and electoral process of the HCJP is to remove the politicization occurred in the judiciary, to prevent the re-seizure of the mentioned institution by organizations like FETO which has secret aims, to make the Assembly, which is a reflection of public sovereignty, effective in the selection of the Council of Judges and Prosecutors (CJP) in accordance with the recommendation of the Venice Commission in 2010 in the interim opinion¹ on the draft law on HCJP. With the amendment, the HCJP has been converted to CJP and the number of members has been reduced from 22 to 13. It is envisaged that 4 members shall be selected by the President and 7 members shall be selected by the TGNA to CJP, to which the Minister of Justice and his undersecretary will be members. When comparative law is examined, it will also be seen that there are many different systems related to appointment of judges - prosecutors and personal rights thereof. In some western democratic countries, there is not even a structure like a council of judges-prosecutors. The important thing is to establish a system that will ensure the impartiality and independence of the judiciary.

As a requirement of democracy, the military courts, which are constantly criticized for judicial independence, have been abolished, members with military-origin in the Constitutional Court have been removed, and the number of Constitutional Court members has been reduced from 17 to 15. The amendments made are aimed at strengthening the independence and impartiality of the judiciary.

A. 11. Martial Law is Removed, State of Emergency is Re-organized

By the Constitutional amendment, the situations requiring the martial law are taken into the scope of reasons requiring the declaration of state of emergency. Thus, the martial law procedure, in which the military initiative is strong, is completely abolished. With the amendment, new regulations of a more democratic quality are introduced concerning the state of emergency. If a decision to declare state of emergency is given by the President, it is envisaged to be published in the Official Gazette on the same day and submitted to the approval of the TGNA on the same day. Presidential Decrees issued on matters required by the state of emergency will be submitted to the Assembly on the same day and will become null and void if the Assembly does not approve it within 3 months. Now, after the constitutional amendment enters into force, the Assembly's open-ended approval process for the decrees of state of emergency will be lifted and it will be scheduled.

B. 12. Holding the Election of Legislative and Executive Bodies Together Brings Balance and Compromise to the State Administration

The presidential and parliamentary elections will be held together and renewed together. If the President makes a decision to renew the Parliamentary election, his election will also be renewed, and if the TGNA makes a decision to renew Presidential elections, the Parliamentary elections will be renewed. The renewal of the elections together will solve the problems between the legislative-executive bodies and prevent the system from being clogged. This, therefore, is a mechanism that provides check and balance, also keeps the search for reconciliation alive.

C. 13. Supervisory Supremacy of Elections is the Basis in 'Presidential Government System'

In the 'Presidential Government System', the President who is the head of the execution and the legislative body are elected by general election. Election is also the

¹ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-tur](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-tur)

solution of the conflicts that may arise between the legislative and executive powers. The nation, which is the sole and exclusive owner of the sovereignty, is the one that builds the legislature and the executive, and the one that changes it.

There is no excuse for not meeting the expectations in this system. Fundamental powers of the President who is the head of the execution such as appointing his / her deputies and ministers as well as appointing senior executives, issuing decrees, and making a budget and submitting it to the Assembly are the indicators of the accountability obligation of the executive to the Nation - the owner of sovereignty -without any excuses.

D. 14. Judicial Review Against all Actions are Available in this System

The trial of offenders and the resolution of conflicts is concerned with the judicial dimension of sovereignty. This sovereign authority is exercised by independent and impartial courts on behalf of the Nation. Judicial review is available against every action and proceeding of the administration within the constitutional and legal boundaries. However, according to the constitution that is in force today, the judicial review is unavailable against the actions that were signed by the president himself. With the law amending the Constitution, administrative procedure will be open against all actions and operations of the president and the Constitutional Court judicial review will be possible against the Presidential Decrees. Therefore, in the 'Presidential Government System' model, there are no areas, subjects and persons closed to judicial review left.

III. CHECK AND BALANCE MECHANISMS IN THE CONSTITUTIONAL AMENDMENT PROPOSAL

The aim of check and balance mechanisms, which are the main elements in the government systems is to prevent legislative, executive and judicial functions to be collected in one single hand or to prevent them from entering the domain of influence of each other.

Since there is a strict separation of powers in the presidential system, the legislative, executive and judicial bodies need to balance each other. Turning the disadvantage of the lack of interaction between them, based on the strict separation of powers, into an advantage with a well-designed check and balance system is seen as a factor strengthening the democracy in particular. Check and balance system also plays a decisive role in the character of the government system.

1. Use of legislative and executive functions by different organs

By the proposal, a stricter separation of powers is adopted in the presidential system compared to the parliamentary system. It is stipulated in the proposal that the executive power belongs to the President and the legislative power belongs to the TGNA. Legislative and executive bodies in the presidential system are independent of each other. In the presidential system, the execution bodies do not come from within the legislative bodies as in the parliamentary system. In the presidential system, both legislative and executive bodies are elected separately by the voters. For this reason, the concept of double legitimacy is widespread in the Presidential system.

2. Review of the Executive power by the Legislative power

a) The bill regulates the ways under which the legislative power obtains information from the executive power and reviews it.

According to the bill, the legislative organ will conduct parliamentary research on a certain matter, discuss it in the Plenary by opening a general debate, the parliamentarians

will address questions in writing to the Vice-Presidents and Ministers and conduct parliamentary investigation with respect to the Vice-Presidents and Ministers.

In such a system, the President is entrusted with the executive power directly through the elections, namely the nation, not through acquiring the vote of confidence of the parliament. In other words, the executive power does not need the vote of confidence to begin performing its duties nor can it be suspended by the motion of censure. Therefore, on the grounds that in the proposed government model, the executive power is not established from among the legislative power, the elections to the executive organ are held separately, the executive organ does not begin performing its duties by obtaining the vote of confidence of the legislative organ and the suggested new system is a reinforced Presidential system with a strong separation of powers, the method where the executive organ is monitored by the censure is abandoned.

b) Turkish Grand National Assembly monitors President, Vice-Presidents and Ministers

The draft law puts an end to the conduct of the executive power by two organs, it is foreseen that the executive power will be exercised by the President and accordingly, President will not be unaccountable as opposed to the parliamentary systems.

1) The unaccountability of the President with respect to the all his actions and decisions signed with the Prime Minister and Ministers, will be removed.

2) The provision stating that the President will not be appealed before the judicial authorities because of his decisions and orders signed ex officio, is revoked.

3) (i) There is a procedure with respect to the fact that the President will be able to be referred to the Supreme Council on account of all crimes without the distinction as to personal crimes and duty related crimes.

(ii) If the President is alleged to commit any crime, launch an investigation may be demanded upon the motion of the Turkish Grand National Assembly obtained by the absolute majority of the total number of the Assembly and it will be decided by three-fifths of the total number through secret ballot that an investigation will be launched.

(iii) In case the decision to launch investigation is taken, candidates will be presented to the commission to the extent of their powers, by the majority which is three times the total number of members, a commission of 15 members will be formed among those candidates by drawing lots for each political party. As a result of the investigation which will be conducted by the commission, the Turkish Grand National Assembly will be able to take referral decision to the Supreme Council by the two-thirds majority of the total number through secret ballot.

According to the Article 106 of the Constitution the amendment of which is requested, it is possible that an investigation be launched into President, his Vice-Presidents and Ministers on grounds of allegations of crimes related to their duties, upon the motion provided by the absolute majority of the total number of the Assembly. The Assembly is to discuss the motion within a month at the latest. Opening an investigation may be decided upon through the secret votes of three-fifths of the total number.

In case the decision to open investigation is taken, candidates three times the total number of members will be presented to the commission to the extent of the powers of political parties, a commission of 15 members will be formed among those candidates by drawing lots for each political party and this commission conducts the investigation.

Pursuant to the report of this commission, the Assembly may be decided upon the referral of Vice-Presidents and Ministers to the Supreme Council through the secret votes of two-thirds of the total number of the Assembly.

3. Mutual Renewal of the Elections

"Mutual Renewal of the Elections" is important as being another balancing and monitoring mechanism. Firstly, this authority is entitling the President to renew the elections to legislative organ, secondly the legislative organ will be able to renew the Presidential elections.

In accordance with framework Article 11 of the bill, Article 116 of the Constitution titled "Renewal of Elections to the Turkish Grand National Assembly and President" is being amended. By the amendment of the governmental system, just because of the following reasons; the removal of Prime Minister and Council of Ministers, co-existence of the executive power and legislative power, election of the President representing the executive power directly by the public and the fact that he will not need the vote of confidence to take office; dismissal of the Council of Ministers by the vote of non-confidence and the cases where the Council of Ministers will not be able to acquire vote of confidence or will not be able to be established, will be out of question. In this respect, the mentioned subjects are not regulated due to renewal of elections.

The renewal of elections will be possible by the decision of three-fifths of the total number of the Turkish Grand National Assembly or decision of the President. In case the Assembly decides to renew the elections, the Presidential election will also be renewed. In the event that the President decides to renew the elections, the elections to the Assembly will also be renewed.

In the second term of five year of the President, the President will be able to stand for election again in case the Turkish Grand National Assembly decides to renew the elections. The newly elected Assembly and President will also serve for a term of five years. However, in the event that the President has exercised the power to renew the elections in his/her second term in office, he/she will not be able to stand for election again.

4. Duties and powers of the Turkish Grand National Assembly

Pursuant to framework Article 5, a regulation is prepared for adjustment to the removal of the Council of Ministers, thus of the power of the Council of Ministers to propose bills in accordance with other Articles of the bill. In this respect, pursuant to framework Article 5, through the proposed amendment to Article 87 of the Constitution, monitoring the Council of Ministers and Ministers will be removed from the duties of the Turkish Grand National Assembly. Moreover, as a result of the removal of the Council of Ministers, the Council will no longer be entitled to issue Decree Laws on certain matters. The "draft" stated in the provision regarding the deliberations of budget and final account draft in the Turkish Grand National Assembly is amended as "proposal".

As in the parliamentary systems, under the presidential systems (USA, South Korea, Argentina, Brazil, etc) the budget is organized by the parliament as well. Thus, the task of the Assembly to discuss budget and final account proposals exists.

5. Mutual veto power

Contrary to the fact that the laws are enacted by the Assembly, in the event that the President exercises the power to veto, the Assembly is able to revoke the veto by the absolute majority, thus, a balanced mechanism is established with this procedure.

Through the suggested regulation, a qualified majority is required in order for the law vetoed by the President to be adopted by the Assembly and in the event that it is accepted as a whole by the absolute majority of the total number of members, it will be promulgated by the President.

6. Presidential Decrees

Presidential Decrees can be regarded as a balancing and monitoring mechanism for implementing policies by accelerating the decision-making under emergency situations.

In parallel with the change in the governmental system, the Council of Ministers will not be entitled to propose new laws. Furthermore, under the new system, the power of the Council of Ministers to issue Decree Laws and regulations is removed and these regulations are replaced with the presidential decrees.

7. Efficiency of the legislative and executive powers in the preparation and adoption of the budget

"Adoption/dismissal of budget" which organizes income and expenditure of a state is considered as a mechanism providing an interaction between legislative and executive power in many government systems. The budget enables in particular the legislative organ to monitor the president under presidential systems. However, the limits of this authority are directly proportionate to the limits of the control of the President over the budget.

As a result of the removal of the Council of Ministers, the power and task of preparing and presenting the budget and final account proposal is entrusted with the President.

The task of discussing budget and final account proposals which is among the tasks of the Turkish Grand National Assembly continues to be exercised. The budget is adopted upon the approval of the Assembly. In other words, the budget prepared by the executive organ is approved by the Assembly.

8. Appointments as regards the Council of Judges and Prosecutors will be carried out by the President and the Turkish Grand National Assembly

The amendment to Article 159 of the Constitution provided by the Framework Article 14 of the draft re-amends the structure of the Council.

Three members of the Council shall be selected among judges and public prosecutors in civil and criminal jurisdiction, who are senior judges and who have not lost the qualifications required for being a senior judge; one member among administrative judges and public prosecutors who are senior judges and who have not lost the qualifications required for being a senior judge by the President of the Republic; three members shall be selected from among members of the Court of Cassation, one member shall be selected from among members of the Council of State and three members, from among academics and lawyers by the Turkish Grand National Assembly. Thereby, the Turkish Grand National Assembly will be able to select members to the Council.

IV- DETAILS OF THE LAW NO. 6771 AMENDING THE CONSTITUTION OF REPUBLIC OF TURKEY

ARTICLE 1 - *"The clause "and impartial" has been added after the clause "independent" in Article 9 of the Constitution of Republic of Turkey dated 7/11/1982 numbered 2709."*

EXPLANATION

With Article 1 of the proposal, the clause "and impartial" has been added after the clause "independent" in Article 9 of the Constitution and the mentioned article is as follows in its amended form: "Judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation."

The European Convention on Human Rights regulates the right to be heard by an independent and impartial tribunal within the scope of the right to a fair trial. With the amendment provided in Article 9 of the Constitution, the impartiality of courts are underlined in addition to their independence. The Constitution guarantees the objective and subjective impartiality of the courts regulated within the scope of the right to a fair trial in Article 6 of the ECHR.

ARTICLE 2 - *"The clause "five hundred and fifty" has been replaced by the clause "six hundred" under Article 75 of the Law No. 2709."*

EXPLANATION

Under Article 2 of the proposal, Article 75 of the Constitution titled "A. Composition" has been amended and the number of deputies has been increased from 550 to 600. The number of deputies has been increased in order to ensure the representation of a vast majority of the public in the Turkish Grand National Assembly, depending on the population growth rate.

ARTICLE 3- *"The clause "twenty-five" has been replaced by "eighteen" in the first paragraph of Article 76 of the Law No. 2709 and the clause "who have not performed compulsory military service" has been replaced by the clause "who are in relation with their military services" in the second paragraph of the same article."*

EXPLANATION

With Article 3 of the proposal, Article 76 of the Constitution titled "B. Eligibility to be a deputy" has been amended and the age of candidacy has decreased from 25 to 18. Thereby, eligibility has been made possible for the citizens between 18-25 years who take part in the elections with their votes but are not eligible. On the other hand, the condition of performing compulsory military service necessary for candidacy has been amended to require that the candidates should not be in relation with military service, considering that 18-year-old electorate cannot perform their military service. Even though the compulsory military service is not performed, eligibility has been made possible for those who are not in relation with their military service.

ARTICLE 4- Article 77 of the Law No. 2709 and its title have been amended as follows:

"ARTICLE 77- Elections for the Turkish Grand National Assembly and the Presidency shall be held on the same day in every five years.

- A deputy whose term of office expires is eligible for re-election.*
- If the simple majority is not obtained in the first round of Presidential elections, a second round of voting is held according to procedure stated in Article 101."*

EXPLANATION

This constitutional amendment ensures that, while designing the government system envisaged by this amendment, it is made possible for the presidential and parliamentary

elections to be held simultaneously and both of these elections can be renewed in case of any blockage in the system. The model suggested is a rational model which has been developed with regard to Turkey's experience concerning government systems and the practices of the world government systems.

In presidential systems, the elections and the intervals between them are prescribed by the Constitution in advance. Therefore, the authority of the legislative and executive powers to hold an early election has been restricted severely. It is exceptional that the parliament will dispose of the term of office of the President.

Therefore, the elections of the legislative and executive powers are scheduled previously in parliamentary systems and the Vice-President replaces the President if the office falls vacant or a person to be re-elected takes office in order to complete the rest of the term of the office. In case the office falls vacant, the parliamentary elections are not automatically renewed and the elections are held according to the normal schedule.

ARTICLE 5- Article 87 of the Law No. 2709 has been amended as follows:

"ARTICLE 87- The duties and powers of the Turkish Grand National Assembly are to enact, amend, and repeal laws; to debate and adopt the proposals of budget and final accounts; to decide to issue currency and declare war; to approve the ratification of international treaties, to decide with the majority of three-fifths of the Turkish Grand National Assembly to proclaim amnesty and pardon; and to exercise the powers and carry out the duties envisaged in the other articles of the Constitution."

EXPLANATION

Under the Framework Article 5, conformity regulations have been introduced in order to abolish the Council of Ministers, thus the authority of the Council of Ministers to propose a (draft) law through the other articles of the proposal.

ARTICLE 6 - Article 98 of the Law No. 2709 has been amended as follows and its title has been removed from the text.

"Article 98 - The Turkish Grand National Assembly shall exercise its powers of acquiring information and supervision by means of parliamentary inquiry, general debate, parliamentary investigations and written question.

A parliamentary inquiry is an examination conducted to obtain information on a specific subject.

A general debate is the consideration of a specific subject relating to the community and the activities of the State at the Plenary of the Turkish Grand National Assembly .

A parliamentary investigation is an investigation about the Vice-Presidents and the Ministers conducted according to the fifth, sixth, seventh paragraphs of Article 106.

A written question is a request for information addressed to the Vice-Presidents or Ministers by deputies to be answered in writing within fifteen days at the latest.

The form of presentation, content, and scope of the motions and procedures of inquiry shall be regulated by the Rules of Procedure."

EXPLANATION

✓ This article regulates the parliamentary inquiries carried out on a specific issue, deliberations held in the Plenary through general debates, written questions asked to deputies, Vice-Presidents and ministers and the parliamentary investigations initiated with respect to the Vice-Presidents and ministers.

✓ In the current regulation, deputies are authorised to ask questions verbally or in writing to the Prime Minister and ministers so that the Council of Ministers can answer the

questions. Upon the proposal, it is envisaged that the Vice-Presidents and ministers can only receive written questions.

✓ As in the current provision, the form, content and scope of parliamentary inquiries, general debates, submittal of written questions and the procedure of inquiry can be regulated by the Rules of Procedure of the Assembly.

✓ The executive power does not stem from the legislative power, the election of the executive power is held separately, the executive power does not receive a vote of confidence from the legislative power in order to take office, the system of government envisaged in the proposal is not the parliamentary system which poorly fulfils the obligation of separation of powers but the presidential system which distinctly complies with the principle of separation of powers. For all these reasons, the executive power is no longer audited by motion of censure and, to this end, it is envisaged that Article 100 of the Constitution regulating the motion of censure is repealed under the paragraph (e) of Framework Article 16.

✓

ARTICLE 7- Article 101 of the Law No. 2709 and its title have been amended as follows:

"ARTICLE 101- The President of the Republic shall be elected directly by the public from among Turkish citizens who are eligible to be deputies, who are over forty years of age and who have completed higher education. The President of the Republic's term of office shall be five years. A person may be elected as President of the Republic for two terms at most.

Political party groups, political parties which have received more than five percent of the valid votes in sum alone or jointly in the latest parliamentary elections, or a hundred thousand electorates may nominate a candidate for Presidency.

If a deputy is elected as President, his/her membership of the Turkish Grand National Assembly shall cease.

In presidential elections conducted by universal suffrage, the candidate who receives the absolute majority of the valid votes shall be elected President of the Republic. If this majority cannot be obtained in the first ballot, the second ballot shall be held on the second Sunday following this ballot. The first two top rated candidates in first ballot shall run for the second, and the candidate who receives the majority of valid votes shall be elected President of the Republic.

If one of the candidates who entitled the right to run for the second ballot is unable to participate in the election for any reason whatsoever, the second ballot shall be conducted by substituting the vacant candidacy in conformity with the ordering constituted in the first ballot. Where only one candidate remains for the second ballot, this ballot shall be conducted as a referendum. Should the candidate receive the majority of the valid votes, he/she shall be elected the President of the Republic. If that candidate cannot receive the majority of the valid votes in election, only presidential election is renewed.

The term of office of the incumbent President of the Republic shall continue until the President-elect takes the office.

Other procedures and principles concerning presidential elections shall be regulated by law."

EXPLANATION

✓ According to the current situation, a person can be nominated only upon the written proposal of 20 deputies while the amendment states that political party groups, political parties which have received more than five percent of the valid votes in sum alone or jointly in the latest parliamentary elections can nominate a candidate for Presidency.

✓ Citizens are also entitled to nominate a candidate. With the amendment, at least a hundred thousand electorates can nominate a candidate for Presidency.

✓ The provision regulating that the membership of President elected ceases in the Turkish Grand National Assembly is still preserved whereas the provision foreseeing that the

relationship between the President elect and his/her party is severed has not been included in the new article and has been repealed.

✓ It is provided that only the presidential elections will be renewed if the candidate cannot receive the majority of valid votes in election.

✓

ARTICLE 8- Article 104 of the Law No. 2709 has been amended as follows:

"ARTICLE 104 - The President of the Republic is the head of the State. Executive power belongs to the President.

In this capacity, he/she shall represent the Republic of Turkey and the unity of the Turkish Nation; he/she shall ensure the implementation of the Constitution, and the regular and harmonious functioning of the organs of the State.

If he/she deems it necessary, delivers the opening speech of the Turkish Grand National Assembly the first day of the legislative year.

He/she gives message to the Assembly about domestic and foreign policy of the country. He/she promulgates laws.

He/she returns laws for reconsideration to the Turkish Grand National Assembly.

He/she lodges an action for annulment with the Constitutional Court for the whole or certain provisions of enacted laws, the Rules of Procedure of the Turkish Grand National Assembly on the grounds that they are unconstitutional in form or in content.

He/she appoints and dismisses Vice-Presidents and ministers.

He/she appoints and dismisses high level State officials, and regulates the procedures and principles relating to the appointment of these, by presidential decrees.

He/she accredits representatives of the Turkish State to foreign states and receives the representatives of foreign states appointed to the Republic of Turkey.

He/she ratifies and promulgates international treaties.

He/she holds a referendum, if he/she deems it necessary, for the laws regarding amendment to the Constitution.

He/she determines the national security policies and takes the necessary measures. He/she represents the Office of Commander-in-Chief of the Turkish Armed Forces on behalf of the Turkish Grand National Assembly.

He/she decides on the use of the Turkish Armed Forces.

He/she revokes or commutes the sentences imposed on individuals, on grounds of chronic illness, disability and old age.

The President may issue presidential decrees on matters relating to the executive power. The fundamental rights, individual rights and duties included in the first and second chapters, and the political rights and duties listed in the fourth chapter of the second part of the Constitution, shall not be regulated by presidential decrees.

No presidential decrees shall be granted on matters to be regulated specifically by law embodied in the Constitution.

No presidential decrees shall be granted on matters explicitly regulated by law. In case of a conflict between presidential decrees and the laws due to differences in provisions on the same matter, the provisions of law shall prevail. In case the Turkish Grand National Assembly introduces a law on the same matter, the presidential decree shall become null and void.

The President may issue by-laws in order to ensure the implementation of laws providing that they are not contrary to these laws and regulations. Decrees and by-laws shall come into force on the day of their publication in the Official Gazette unless a date later than publication is determined.

The President of the Republic shall also exercise powers of election and appointment, and perform the other duties conferred on him/her by the Constitution and laws."

EXPLANATION

While it is provided in the Constitution that the executive duty and power is exercised by the President and the Council of Ministers, the proposal of the constitutional amendment has granted the executive power only to the President.

Therefore, the provisions relating to the Council of Ministers have been repealed from the relevant articles in the Constitution; a certain part of the powers of the Council of Ministers have been regulated as the powers of the President; some clauses of "decree laws" have been amended as "presidential decrees" and accordingly, the duties and powers of the President have been amended to exclude appointing the Prime Minister and accepting his/her resignation, appointing and dismissing ministers on the proposal of the Prime Minister, presiding over the Council of Ministers or calling it to meet under his/her chairpersonship whenever he/she deems it necessary.

According to the proposal, the executive power belongs to the President.

Furthermore, the President is authorised to;

- ✓ give messages to the Assembly about domestic and foreign policy of the country,
- ✓ appoint and dismiss Vice-Presidents and ministers,
- ✓ appoint and dismiss high level State officials, and regulate the procedures and principles relating to the appointment of these, by presidential decrees,
- ✓ determine the national security policies and take the necessary measures,
- ✓ issue presidential decrees on matters relating to the executive power,
- ✓ issue by-laws in order to ensure the implementation of laws providing that they are not contrary to these laws.

However,

- ✓ The fundamental rights, individual rights and duties under Chapter II and the political rights and duties under Chapter IV cannot be regulated by the presidential decrees.
- ✓ No presidential decree can be issued on the matters especially regulated by law under the Constitution.
- ✓ No presidential decree can be issued on the matters clearly stated in the law.
- ✓ Provisions of law apply in case of conflict with the presidential decrees.
- ✓ The presidential decrees become null and void where the Turkish Grand National Assembly enacts a law on the same matter.
- ✓ The presidential decrees are subject to the review of the Constitutional Court. They come after the laws in norms hierarchy.

Since the Military Court of Cassation and the Military High Court of Administration are abolished by the constitutional amendment proposal, electing members for these courts have also been excluded from the duties and powers of the President.

The President will perform the duties of selection and appointment and the other duties and exercise the powers prescribed by the Constitution and the laws.

ARTICLE 9- Article 105 of the Law No. 2709 and its title have been amended as follows:

"ARTICLE 105 – [Parliamentary] Investigation may be requested claiming that the President commits a crime through a motion tabled by an absolute majority of the total number of members of the Turkish Grand National Assembly . The Assembly shall debate this request within one month at the latest and may decide to open an investigation through a three-fifths majority in secret ballot.

Where a decision to launch an investigation is made, the investigation shall be conducted by a committee of fifteen members, chosen by lot, for each political party in the Assembly, separately from among three times candidates nominated for each seat reserved to party groups in proportion to their number of seats. The committee shall submit its report on the result of the investigation to the Assembly within two months. In case the investigation is not completed within the time allotted, the committee shall be granted a further and final

period of one month. Following its submission to the Office of the Speaker, the report shall be distributed within ten days and debated in the Plenary within ten days after its distribution. The Turkish Grand National Assembly may decide to refer the case before the Supreme Court with two-thirds majority of the total number of members through secret ballot. Supreme Court trial shall be concluded in three months, if the investigation is not completed within the time allotted, a further three months shall be granted for once, trial shall absolutely be completed within that time.

The President in respect of whom an investigation has been initiated cannot decide to hold elections.

The term of office of the President, who is convicted in the Supreme Court by a crime that prevents from being elected, shall cease.

The alleged offences committed during the term of office shall be subject to the provisions of this article also after the term of office expires."

EXPLANATION

In the current system, it is stated in Article 105 of the Constitution that judicial review is not available against the decisions taken ex officio by the President and he/she has no criminal liability for the offences except for treason. However, even the possibility of trial of the President for treason were removed by law when the Treason Act dated 29 April 1920 regulating the crime of treason was abolished on 12 April 1991. Although the President is granted with extensive authorities in the current parliamentary system, he/she has no criminal liability. On the other hand, the proposal stipulates that criminal liability has been imposed for the President, as required by democracy, and judicial review has been made possible against his/her decisions.

Due to the fact that the President will exercise the executive power by removing the dual authority within the executive power, the non-accountability of the President which was valid in the parliamentary system is renounced. According to this;

✓ The non-accountability of the President in all the actions and decisions signed by the Prime Minister and ministers is lifted.

✓ The provision regulating that judicial review is not available against the decisions and orders signed ex officio by the President is repealed.

✓ The procedure of referring the President to the Supreme Court for all the offences, without discriminating between personal offences or offences committed during the performance of the duty is regulated.

✓ An investigation can be requested, upon a motion of the absolute majority of total number of deputies in the TGNA, with respect to the allegedly committed offences by the President and three fifths of total number of deputies can decide in secret ballot whether an investigation will be initiated.

✓ Where it is decided to launch an investigation, the investigation shall be conducted by a committee of fifteen members, chosen by lot, for each political party in the Assembly, separately from among three times candidates nominated for each seat reserved to party groups in proportion to their number of seats. This means that three thirds of total number of deputies can decide in secret ballot to refer the President to the Supreme Court. In the current system (550 deputies), 413 votes are required for the referral of the President to the Supreme Court whereas the envisaged system (600 deputies) deems it sufficient to receive 400 votes despite the increase in the number of deputies, which provides proportional facilitation. According to this, in the current system the proportion of required votes is 3/4 of the total number of deputies so that the President can be referred to the Supreme Court for treason, whereas this proportion has decreased to 2/3 in the proposal.

✓ Certain periods of investigation and proceeding which do not exist in the current system are introduced in the proposal. It is envisaged that fifteen-member commission will complete the investigation process within (2+1) 3 months at most, the report of the commission will be submitted to the Office of the Speaker within 10 days and deliberations

will be held in the Plenary within the following ten days and finally, the proceedings will be completed in the Supreme Court within (3+3) 6 months at most.

ARTICLE 10- Article 106 of the Law No. 2709 and its title have been amended as follows:

"ARTICLE 106 – After being elected, the President may appoint one or more Vice-Presidents.

In case the office of the President falls vacant for any reason, the election of the President shall be held in forty five days. Until a new one is elected, by the Vice-President shall act as president and he/she shall exercise the powers of the President. If the general election is to be held in a year or less, the election of the Turkish Grand National Assembly shall be renewed together with the election of the President. If the general election is to be held in over one year, the President [newly] elected shall continue to serve until the election date of the Turkish Grand National Assembly. For the President who is completing that remaining period, this time-frame is not counted as the term of office. Both elections are held together at the date of the general elections of the Turkish Grand National Assembly.

In the event of a temporary absence of the President of the Republic on account of illness and travel abroad, the Vice-President shall serve as Acting President of the Republic and exercise the powers of the President of the Republic.

Vice-Presidents and ministers shall be appointed from among those eligible to be elected as deputies and dismissed by the President of the Republic from among those eligible to be elected as deputies. Vice-Presidents and ministers shall take their oaths before the Turkish Grand National Assembly, as written in Article 81. If members of the Turkish Grand National Assembly are appointed as Vice-Presidents or ministers, their parliamentary membership shall cease.

Vice-Presidents and ministers shall be accountable to the President. [Parliamentary] Investigation alleging that they committed a task-related crime may be requested against the Vice-Presidents and ministers through a motion tabled by an absolute majority of the total number of members of the Turkish Grand National Assembly. The Assembly shall debate on this request within one month at the latest and may decide to open an investigation with a three-fifths majority in secret ballot.

Where a decision to launch an investigation is made, the investigation shall be conducted by a committee of fifteen members, chosen by lot, for each political party in the Assembly, separately from among three times candidates nominated for each seat reserved to party groups in proportion to their number of seats. The committee shall submit its report on the result of the investigation to the Office of the Speaker within two months. In case the investigation is not completed within the time allotted, the committee shall be granted a further and final period of one month."

EXPLANATION

The article is re-arranged with the side-title of "Vice-Presidents, deputy to the President and ministers" in order to adapt to the changes in the government system.

The President may appoint one or more Vice-presidents and ministers among those who have the qualification to be elected as a deputy.

Vice-Presidents and ministers shall take oath before the Turkish Grand National Assembly as written in Article 81.

In the event of a temporary absence of the President of the Republic on account of illness and travel abroad, the Vice-President shall serve as Acting President of the Republic.

However, in the case the Office of Presidency is permanently vacated for any reason (resignation, death, etc.), the Presidential election is held within forty-five days. The Vice-

President shall serve as Acting President of the Republic and exercise the powers of the President of the Republic until the election of the new President. If the general election is to be held within one year, the election of the Turkish Grand National Assembly will be renewed together with the Presidential election. If the general election is to be held in over one year, the President [newly] elected shall continue to serve until the election date of the Turkish Grand National Assembly. For the President who is completing that remaining period, this time-frame is not counted as the term of office. Both elections are held together at the date of the general elections of the Turkish Grand National Assembly.

The Vice-Presidents and ministers are envisaged to enjoy the provisions on parliamentary immunity stipulated in Article 83 of the Constitution for the alleged offences which are not task-related.

According to Article 106 of the Constitution envisaged to be amended by the proposal, [Parliamentary] investigation alleging that they committed a task-related crime may be requested against the Vice-Presidents and ministers through a motion by an absolute majority of the total number of members of the Turkish Grand National Assembly. The Assembly shall decide on this request within one month at the latest. It may decide to launch an investigation with a three-fifths majority in secret ballot.

Where a decision to launch an investigation is made, the investigation shall be conducted by a committee of 15 members, chosen by lot, for each political party in the Assembly, separately from among three times candidates nominated for each seat reserved to party groups in proportion to their number of seats.

Upon the commission report, the Turkish Grand National Assembly may decide to refer the case before the Supreme Court with two-thirds majority of the total number of members of the TGNA through secret ballot.

If the Vice-Presidents and ministers are alleged, after the termination of their duties, to have committed crimes related to their duties while they were on duty, the same procedure could be enforced and they could be tried before the Supreme Court.

According to Article 100 of the current Constitution, it may be required to launch an investigation against the Prime Minister and Ministers through a motion by at least one tenth of total number of members of the Parliament. The decision to launch an investigation is based on the general procedure. The decision for referring the case to the Supreme Court is taken only through secret ballot of the absolute majority of total number of members.

The formation, abolition, functions, powers and organization, and formation of central and regional organization of the ministries shall be regulated by presidential decrees.

ARTICLE 11- Article 116 of the Law No. 2709 has been amended together with its title as follows.

"ARTICLE 116 - The Grand National Assembly may decide to renew elections with a three-fifths majority of the total number of members. In this case, general election of the Grand National Assembly and presidential elections shall be held together.

In the case of that the President decides to renew the elections, general election of the Grand National Assembly and presidential elections shall be held together.

Where the renewal of the elections is decided by the Grand National Assembly during the second term of the President, he/she may run [for the presidency] once more.

The powers of the Assembly and the President of the Republic of which the renewal of elections is decided together, shall continue until these organs take the offices.

The terms of offices of the Assembly and the President elected in this manner shall also be five years."

EXPLANATION

Both the TGNA and the President of the Republic have been vested with the power to renew elections by amending the Article 116 of the law No. 2709 by Article 12 of the Law on Making Amendments to the Constitution of the Republic of Turkey.

Renewal of the elections is made possible by the decision of 3/5 majority of the total number of members of the Assembly or by the decision of the President. In the case the elections of the Grand National Assembly are decided to be renewed, the election of the President will also be renewed. In the case the President decides to renew the elections, the Grand National Assembly elections will also be renewed simultaneously. In this way, mutual termination authority has been established, and check and balance mechanism has been formed.

Where the renewal of the elections is decided by the Grand National Assembly or the President during the second five-year term of the President, he/she may run [for the presidency] again. The terms of offices of the Assembly and the President re-elected in this manner shall also be five years.

Furthermore, the powers of the Assembly and the President of the Republic following the decision of renewal of the elections, shall continue until these organs are elected.

ARTICLE 12- Article 119 of the Law No. 2709 has been amended together with its title as follows and its side-titles have been removed from the text.

"ARTICLE 119 - The President of the Republic may declare state of emergency in one or more regions or throughout the country for a period not exceeding six months in the event of war, the emergence of a situation necessitating war, mobilization, uprising, strong and actual attempt against homeland and Republic, widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation, emergence of widespread acts of violence which are aimed at the destruction of the constitutional order or the fundamental rights and freedoms, severely destruction of public order due to act of violence, and emergence of natural disaster, dangerous pandemic disease or severe economic crises.

The decision of declaration of state of emergency shall be published on the issuing day in the Official Gazette, and submitted to the Turkish Grand National Assembly for approval, on the same day.

If the Turkish Grand National Assembly is not in session, it shall be immediately announced for assembly. The Turkish Grand National Assembly may, when it deems necessary, reduce or extend the period of state of emergency, or lift it.

The Turkish Grand National Assembly may extend the period of state of emergency for a maximum of four months each time upon President's request. In the event of state of war, the limit of four months does not apply.

The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency and the manner how fundamental rights and freedoms shall be restricted or suspended temporarily in line with the principles of Article 15, which provision shall be applied, and how the procedures shall be exercised sided, shall be regulated by the Act on State of Emergency.

During the state of emergency, the President of the Republic, may issue presidential decrees on the matters necessitated by the state of emergency without the limitation set forth in the second sentence of the seventeenth paragraph of Article 104. These decrees having the force of law shall be published in the Official Gazette, and shall be submitted to the Turkish Grand National Assembly on the same day for approval.

Save for the situations that the Turkish Grand National Assembly may not meet due to war and force majeure; presidential decrees issued during the state of emergency shall be debated and concluded in the Turkish Grand National Assembly within three month. Otherwise, the Presidential decree issued in the state of emergency shall ex officio cease to have effect".

EXPLANATION

✓ With the amendment proposal, the state of emergency administration is regulated in one single article. The martial law practice, which means that the powers of civil administration are to be transferred to the military authorities, is removed from the Constitution and the reasons necessitating the martial law are regulated in a single article under the state of emergency administration. In the current Constitution, the emergence of a state of war, a situation necessitating war, uprising, strong and actual attempt against homeland and Republic or emergence of widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation which requires declaration of martial law are defined among the situations necessitating the declaration of state of emergency in the proposal. It is an important step taken for Turkish democracy.

✓ The power to declare state of emergency has been granted to the President of the Republic instead of the Council of Ministers meeting under the chairpersonship of the President of the Republic.

✓ In the declaration of state of emergency for the reasons of widespread acts of violence and severely destruction of public order, the procedure to take views of the National Security Council is abolished and the President is provided the opportunity to make a direct decision.

✓ Provisions regarding the publication in the Official Gazette, of the decisions taken for declaration of state of emergency existing in the current articles and submitting thereof to the approval of the Assembly are reserved.

Furthermore, in accordance with the current Constitution, while the Council of Ministers meeting under the chairpersonship of the President of the Republic may issue decree laws on the issues required by the state of emergency during the period of state of emergency, in the system brought by the proposal, the power to issue decree laws is given to the President on the issues required by the declaration of state of emergency, and the provision of submitting the state of emergency decrees to the approval of the Assembly is protected. Presidential decrees to be issued in the period of state of emergency are not subject to the restrictions stipulated in the second sentence of the Article 104(17).

The discussion for the period concerning submission of the state of emergency decision for approval of the Assembly because of the expression "immediately" in the current article 121 is ended by adding the expression "on the same date".

It is adopted that, without prejudice to the situations that the Turkish Grand National Assembly may not meet due to war and force majeure; presidential decrees issued during the state of emergency shall be debated and concluded in the Turkish Grand National Assembly within three month. Otherwise, Presidential decrees issued in the state of emergency shall be repealed ex officio.

ARTICLE 13- The following paragraph has been added to Article 142 of the Law No. 2709.

"No military courts shall be formed other than disciplinary courts. However, in state of war, military courts shall be formed with jurisdiction to try offences committed by military personnel related to their duties."

EXPLANATION

In Article 142 of the Constitution which is envisaged to be amended by frame article 13 of the proposal, it is provisioned that no military courts, except for state of war, should be formed other than disciplinary courts and military courts have been abolished.

However, it is envisaged that, in state of war, military courts should be formed with jurisdiction to trial offences committed by military personnel related to their duties.

Accordingly, by paragraph (E) of frame article 16, article 145 regulating the Military Justice, article 156 regulating High Military Court of Appeal and article 157 regulating High Military Administrative Court are also abolished.

As a matter of fact, in Fethi Demirtaş v. Turkey case of the ECHR, it is briefly stated that; "the ECHR finds that it is understandable that the applicant, who is a conscientious objector, is concerned about being trialed for a military offence before a court comprised of soldiers only, and that military judges may act partially in some part of the case; thus, the mentioned person is rightly concerned that the military court will make partial evaluations under the influence of prejudiced thoughts, therefore, it is acceptable, that the doubts stated by the applicant as regard to impartiality and independency of that court have a legitimate ground, in this respect, it is stressed that paragraph 1 of article 6 of the ECHR has been violated in the mentioned application". With the amendment made, the ECHR's decision has been fulfilled. This is an important step taken in the name of democracy and civilization.

ARTICLE 14- *"The title of article 159 of the Law No. 2709 and the expression "High" in the first and ninth paragraphs have been removed from the text; second, third, fourth and fifth paragraphs have been amended as follows; the expression "regular" in sixth paragraph has been removed from the text; the expression "laws, regulations, bylaws and circulars" in the ninth paragraph has been amended as "laws and other legislation".*

The Council of Judges and Prosecutors shall be composed of thirteen members; shall comprise two chambers.

The President of the Council is the Minister of Justice. The Undersecretary to the Ministry of Justice shall be an ex-officio member of the Council. By the President of the Republic, three members of the Council shall be selected among judges and public prosecutors, who are first category judges and who have not lost the qualifications required for being a first category judge, in ordinary justice and one member among administrative judges and public prosecutors who are first category judges and who have not lost the qualifications required for being a first category judge; by the Turkish Grand National Assembly, three members shall be selected from among members of the Court of Cassation, one member shall be selected from among members of the Council of State and three members, the qualifications of whom are defined by law, from among academic members in the field of law of high education institution and lawyers. Among the members elected from academic member and lawyers, at least one shall be academic member and one shall be a lawyer.

The applications for the memberships to be selected by the Turkish Grand National Assembly shall be made to the Office of the Speaker of the Assembly. The Office of the Speaker conveys the applications to the Joint Committee composed of members of the Committee on Justice and Committee on Constitution. The Committee shall elect three candidates for each vacancy with a two-thirds majority of total number of members. If the procedure of electing candidates cannot be concluded in the first round, a three-fifth majority of total number of members shall be required in the second round. If the candidates cannot be elected in this round as well, the procedure of electing candidates shall be completed by choosing a candidate by lot, for each membership among the two candidates who have received the highest number of votes. Turkish Grand National Assembly shall hold a secret ballot selection for the candidates the Committee has identified. In the first round a two-thirds majority of total number of members shall be required; in case the election cannot be concluded in this round, in the second round a three-fifth majority of total number of members shall be required. Where the member cannot be selected in the second round as well, the selection shall be completed by choosing a candidate by lot among the two candidates who have received the highest number of votes.

Members shall be selected for a four year term. Members may be re-elected, at the end of their term of office.

Selection of members to the Council shall be held within thirty days before the expiry of the term of office of the members. In case of vacancies for members selected to the Council prior to the expiry of the term of office, new members shall be appointed within thirty days following the vacancy."

EXPLANATION

With the proposed amendment in Article 159 of the Constitution by frame article 14 of the proposal, expression "High" has been removed from the name of the Council and the structure of the Council has been re-arranged.

Number of members of the Council has been decreased from 22 to 13, number of chambers from 3 to 2, and the practice of substitute membership is terminated.

Three members of the Council shall be selected among judges and public prosecutors in civil and criminal jurisdiction, who are senior judges and who have not lost the qualifications required for being a senior judge; one member among administrative judges and public prosecutors who are senior judges and who have not lost the qualifications required for being a senior judge by the President of the Republic; three members shall be selected from among members of the Court of Cassation, one member shall be selected from among members of the Council of State and three members, from among academics and lawyers by the Turkish Grand National Assembly. Thus, in accordance with the recommendation of the Venice Commission in 2010 on the draft law on the High Council of Judges and Prosecutors, the parliament, which is a reflection of popular sovereignty, has been made effective in the selection of the Council of Judges and Prosecutors (CJP) and the way for TGNA to select members to the Council has been opened.

ARTICLE 15- Article 161 of the Law No. 2709 has been amended together with its title as follows.

"ARTICLE-161: The expenditure of the State and of public corporations, other than state economic enterprises, shall be determined by annual budgets.

The beginning of the fiscal year and the preparation, implementation, and control of the central government budget and special periods and procedures for investments, or for

business and services expected to last more than one year shall be defined by law. No provisions other than those pertaining to the budget shall be included in the Budget Act.

The President shall submit central government budget bill to the Turkish Grand National Assembly at least seventy-five days prior to the beginning of the fiscal year. The budget bill shall be examined by the Committee on Budget. The budget bill adopted by the Committee on Budget within fifty-five days shall thereafter be debated and concluded by the Plenary before the beginning of the fiscal year.

In cases the budget law cannot put into force in time, a provisional budget shall be adopted. Where provisional budget cannot be adopted then the budget of the previous year increased by the revaluation rate shall be applied.

Members of the Turkish Grand National Assembly shall express their opinions, in the Plenary, on public administrations' budgets during the debates of each budget; they shall not make proposals that entail an increase in expenditure or a decrease in revenue.

In the Plenary, public administrations' budgets and motions for amendments shall be read out and voted without debate. The appropriation granted by the central government budget shall indicate the limit of expenditure allowed. No provision shall be included in the budget to the effect that the limit of expenditure may be exceeded by a Presidential Decree.

In motions of amendment entailing an increase in appropriations under the budget of the current fiscal year, and, in bills entailing financial burden in the budgets of the current or following fiscal year, the financial resources to meet the stated expenditure shall be indicated.

Central government final accounts bills shall be submitted to the Turkish Grand National Assembly by the President within six months at the latest after the end of the relevant fiscal year. The Court of Accounts shall submit its statement of general conformity to the Assembly within seventy-five days of the submission of the final accounts bill to which it is related.

The submission of the final accounts bills and the statement of general conformity to the Turkish Grand National Assembly shall not preclude the auditing and trial of the accounts for the relevant fiscal year that have not been concluded by the Court of Accounts, and shall not mean that a final decision has been taken on these accounts.

Final accounts bills shall be debated and decided in conjunction with the budget bill of the new fiscal year."

EXPLANATION

The power and duty to prepare and submit the budget and final accounts proposals are granted to the President of the Republic of Turkey with the removal of the Council of Ministers.

As in the parliamentary government systems (the USA, South Korea, Argentina, Brazil, etc.), the budget is made by the parliament in the presidential systems as well. For this reason, the task of negotiating the budget and final accounts bills which is among the tasks of the Grand National Assembly is being continued.

ARTICLE 16- Pursuant to the bill:

"A)

1. "and Council of Ministers" under Article 8;
2. "martial law" under the first paragraph of Article 15,
3. under the fourth paragraph of Article 17 and,
4. under the fifth paragraph of Article 19;
5. "Council of Ministers and" under the first paragraph of Article 88 and "draft law and" under the second paragraph;
6. "directly or upon the motion of the Council of Ministers" under the third paragraph of Article 93;

7. "The acts of the President of the Republic in his/her own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review. Nonetheless," under the second paragraph of Article 125 and "martial law" under the sixth paragraph;

8. "Martial law" under the first paragraph of Article 148, "High Military Court of Appeals, High Military Administrative Court, and "high" under the sixth paragraph, "General Commander of the Gendarmerie" under the seventh paragraph;

9. "government bill or" under the fourth paragraph of Article 153;

10. "High" under the second paragraph of Article 154,

11. "Government bills submitted by the Prime Minister and the Council of Ministers" and "examine draft regulations" under the second paragraph of Article 155, "high" under the third paragraph are removed from the Articles.

B)

12. "by the Council of Ministers" under the fourth paragraph of Article 73 is replaced with "by the President of the Republic";

13. The heading of Article 78, "D. Deferment of elections for the Turkish Grand National Assembly and by-elections";

14. "Council of Ministers" under the second paragraph of Article 117 is replaced with "President of the Republic";

15. "Prime Minister, the Chief of the General Staff, deputy prime ministers" under the first paragraph of Article 118 is replaced with "Vice-Presidents", "the commanders of the Land, Naval and Air Forces and the General Commander of the Gendarmerie" is replaced with "Chief of General Staff, the commanders of the Land, Naval and Air Forces", "to the Council of Minister" under the third paragraph is replaced with "to the President of the Republic", "by the Council of Ministers" is replaced by "by the President of the Republic", "Prime Minister" under the fourth paragraph is replaced with "Vice-Presidents", "of the Prime Minister" under the fifth paragraph is replaced with "of the Vice-President", "by the law" under the sixth paragraph is replaced with "by the Presidential decree";

16. "only by law, or by the authority expressly granted by law" under the third paragraph of Article 123 is replaced with "by law or Presidential Decree";

17. "Prime Ministry" under the first paragraph of Article 124 is replaced with "President" and "the regulations" is replaced with "the Presidential Decrees";

18. "Council of Ministers" under the sixth paragraph of Article 127 is replaced with "President";

19. "by the Council of Ministers" under the second paragraph of Article 131 is replaced with "by";

20. "to the Office of the Prime Minister" under the first paragraph of Article 134 is replaced with "to the Minister to be authorized by the President";

21. "Regulation" under the first paragraph of Article 137 is replaced with "Presidential Decree";

22. "of the decrees having the force of law" under the first paragraph of Article 148 is replaced with "of the Presidential Decrees", "Members of the Council of Ministers" under the sixth paragraph is replaced with "Vice-Presidents and Ministers";

23. "twelve" under the first paragraph of Article 149 is replaced with "ten";

24. "of the decrees having the force of law" under Article 150 is replaced with "of the Presidential Decrees" and "parliamentary groups of the ruling party or parties and of the main opposition party and Turkish Grand National Assembly" is replaced with "two political party groups possessing the highest number of members in the Turkish Grand National Assembly and";

25. "decree having the force of law" under Article 151 and,

26. under the third paragraph of Article 153 is replaced with "Presidential Decree";

27. "decree having the force of law" under the first paragraph of Article 152 and

28. second paragraph of Article 153 is replaced with "Presidential Decree";

29. "civil, administrative, and military" under the first paragraph of Article 158 is replaced with "civil and administrative";

30. "the government" under the fourth paragraph of Article 166 is replaced with "President";

31. "Council of Ministers" under the second paragraph of Article 167 is replaced with "President".

C)

32. Under the third paragraph of Article 89, "by the absolute majority of the total number of members" is added after the phrase "the law sent back" and,

33. "appointed by the President" is added at the beginning of the third paragraph of Article 117.

D)

34. "administrative investigation" is added before "examination" under the first paragraph of Article 108, "Armed Forces and" under the second paragraph is removed from the Article, "the members and the Chairperson from among the members ... appointed ... from among those with the qualifications set forth in the law" under the third paragraph is replaced with "Chairperson and members", "by law" under the fourth paragraph is replaced with "by Presidential Decree".

E)

35. "seventeen" under the first paragraph of Article 146 is replaced with "fifteen", one member from the High Military Court of Appeals, and one member from the High Military Administrative Court" under the third paragraph and "High Military Court of Appeals, High Military Administrative Court" under the fourth paragraph are removed from the Article.

F)

36. Second sentence of the second paragraph of Article 82,

37. Second paragraph of Article 96,

38. Fourth and fifth paragraphs of Article 117,

39. Second sentence of the third paragraph of Article 127,

40. Last sentence of the first paragraph of Article 150,

41. Article 91 regarding the power to issue Decree having the force of law,

42. Article 99 regarding the censure,

43. Article 100 regarding the Parliamentary Investigation,

44. Article 102 regarding the Presidential Election,

45. Article 107 regarding the General Secretariat of the President of the Republic,

46. Article 109 regarding the formation of the Council of Ministers,

47. Article 110 regarding taking office and vote of confidence (Council of Ministers),

48. Article 111 regarding the vote of confidence while in office (Council of Ministers),

49. Article 112 regarding functions and political responsibilities (Council of Ministers),

50. Article 113 regarding the establishment of Ministries and Ministers,

51. Article 114 regarding the Provisional Council of Ministers during elections,

52. Article 115 regarding Regulations,

53. Article 120 regarding Declaration of state of emergency because of widespread acts of violence and serious deterioration of public order,

54. Article 121 regarding the States of emergency,

55. Article 122 regarding martial law, mobilization and declaration of war,

56. Article 145 regarding military justice,

57. Article 156 regarding High Military Court of Appeals,

58. Article 157 regarding High Military Administrative Court,

59. Article 162 regarding the debate on the budget,

60. Article 163 regarding Principles governing budgetary amendments,

61. Article 164 regarding final accounts are abrogated"

EXPLANATION

In order to comply with the governmental system proposed by the Article, some phrases under different Articles of the Constitution are amended, sentences are added to or removed from certain Articles.

The provision stating that the acts of the President of the Republic per se, and the decisions of the Supreme Military Council are outside the scope of judicial review, is removed from the Constitution. Therefore, judicial remedy will be available for such acts, too. This amendment means taking a major step forward in the name of Turkish democracy.

ARTICLE 17- The following provisional article is added to the Law No. 2709.

"PROVISIONAL ARTICLE 21-

A) *27th Legislative Term Parliamentary elections to the Turkish Grand National Assembly and Presidential election shall both take place on 3/11/2019. The members of the Turkish Grand National Assembly and President continue to hold office until the date of the elections. In the event that the Assembly decides to call an election, 27th Legislative Term Parliamentary elections and Presidential election take place on the same day.*

B) *Within six months at the latest from the date of promulgation of this Law, the Turkish Grand National Assembly organizes other legal regulations and amendments to the Rules of Procedure of the Assembly as required by the amendments brought by this Law. Amendments which are stated to be made by the Presidential decree, will be brought by the President within six months at the latest from the date of his/her taking office.*

C) *According to the amendment made to Article 159 of the Constitution, election of members to the High Council of Judges and Prosecutors shall be held within thirty days at the latest and they shall take office on the working day following the fortieth day after the date of entry into force of this Law. The applications for the memberships shall be made to the Office of the Speaker of the Assembly within five days as of the entry into force of this Article. The Office of the Speaker conveys the applications to the Joint Committee composed of members of the Committee on Justice and Committee on Constitution. The Committee shall elect three candidates for each vacancy with a two-thirds majority of total number of members within ten days. If the procedure of electing candidates cannot be concluded in the first round and two-thirds majority cannot be obtained, second and third round elections are held; in these rounds, the candidate acquiring the three-fifths majority of the total number of votes is elected. If the candidates cannot be elected in this round as well, the procedure of electing candidates shall be completed by choosing a candidate by lots among twice the number of candidates who have received the highest number of votes in the third round. Plenary of the Turkish Grand National Assembly concludes the elections within fifteen days in accordance with the same procedures and principles. The present members of High Council of Judges and Prosecutors shall hold office until the date on which the new members take office and take actions pursuant to the provisions in the Law in force. New members shall exercise their duties in accordance with the provisions of the existing Law which are not unconstitutional until an amendment is brought to the relevant Law. Among those whose memberships were expired and were not re-elected to the High Council of Judges and Prosecutors, the ones selected among judges and prosecutors of civil judiciary shall be appointed as members of High Court of Appeals upon their requests and the ones selected among judges and prosecutors of administrative judiciary shall be appointed as members of Council of State by the High Council of Judges and Prosecutors; the ones elected among academicians and lawyers shall be appointed as members of Council of State by the President. During such elections and appointments, whether there is enough vacancy in cadres is not considered. Instead, enough vacancies are added to the cadres in High Court of Appeals and Council of State for the number of elected and appointed members.*

D) *Memberships of those who are elected as members of Constitutional Court from the High Military Court of Appeals and High Military Administrative Court, exist until their memberships are expired for any reason.*

E) *As of the date of entry into force of this Law, High Military Court of Appeals, High Military Administrative Court and military courts are abrogated. Within four months as of the entry into force of this Law; in accordance with their choices and acquired rights, Heads, Chief Prosecutors, Second Heads and members as well as other military judges (excluding*

reserve officers) from the category of military judges in High Military Court of Appeals and High Military Administrative Court;

a) may be appointed as judges or prosecutors of civil or administrative judiciary by the High Council of Judges and Prosecutors.

b) As regards their salaries, additional payments, allowance, judicial allowance, additional allowance, financial and social rights and aids along with their other rights, judges and prosecutors of civil or administrative judiciary shall be appointed in their existing categories, to cadres of legal service under the Ministry or Presidency of General Staff, by the Ministry of National Defense and as regards the rights and obligations other than those stated above, they shall be appointed, provided that the legislation provisions on the date of entry into force of this Law continue to apply. The procedures and principles regarding the compensation to be paid to those who are entitled to pension and will retire from their office on their own accord before the retirement on the age margin, shall be regulated by law. Of the files examined in the annulled military judicial authorities, those at the stage of examination of legal remedy shall be submitted to High Court of Appeals or Council of State where relevant, other files shall be submitted to the civil or administrative judicial authorities with jurisdiction and competence, where relevant, within four months."

F) Decree Laws, regulations, guidelines issued by the Prime Ministry or Council of Ministers as well as other regulatory acts which are in force on the date of entry into force of this Law shall be valid unless annulled. Articles 152 and 153 continue to apply as regards Decree Laws in force.

G) Powers granted to the Prime Ministry and Council of Ministers through the laws or other legislations shall be exercised by the President until an amendment is made to the relevant legislation.

H) Last paragraph of Article 67 of the Constitution shall not apply regarding the first mutual Parliamentary and Presidential elections which will be held following the date of entry into force of this law. "

EXPLANATION

Transitional provisions which will facilitate the adjustment of the legal system to the Presidential System of Government are regulated under these Provisional Articles. As it is provided that the number of members and chambers of the High Council of Judges and Prosecutors will be reduced, the members will be selected again.

ARTICLE 18- By virtue of this Law;

"a) Amendments made to the Articles 8,15,17,19, 73, 82, 87, 88, 89, 91, 93, 96, 98, 99,100,104, 105,106,107,108,109,110,111,112,113 and repealed second and third paragraphs of Article 114, amendments made to Articles 115,116,117,118,119,120,121,122, 123,124,125 and amendment to the last paragraph of Article 127; amendments to Articles 131,134,137 and amendment to the first paragraph of Article 148 and amendment to "members of Council of Ministers" under the sixth paragraph, amendments to second paragraphs of Articles 150,151,152,153, 155 and amendments to Articles 161,162,163,164,166 and 167, paragraphs (F) and (G) of the Provisional Article 21 in the Constitution shall enter into force on the date when the President takes office, following the mutual elections to Turkish Grand National Assembly and Presidency,

b) Amendments to Articles 75, 77, 101 and 102 of the Constitution shall enter into force on the date at the beginning of the calendar concerning the first elections to the Turkish Grand National Assembly and Presidential elections,

c) Other amended provisions with the annulled last paragraph of Article 101 as follows "If the President-elect is a member of a party, his/her relationship with his party shall be severed" shall enter into force on the date of promulgation, and referenda shall be held on the above-mentioned Articles."

EXPLANATION

In Article 18 of the Law; the subjects of entry into force and referendum are regulated. Different dates are provided for the entry into force by the paragraphs (a), (b) and (c) of the bill.

V. CONCLUSION

1. The Constitutional Amendment establishes a new governmental system.
2. The proposed governmental system is named "**Presidential System of Government**".
3. Under this system, the executive and legislative power will be formed directly by the Nation.
4. The authority to enact laws belongs solely to the Turkish Grand National Assembly. Nor the President neither the Ministers are entitled to introduce laws. The right to propose bills is vested only and unconditionally with the parliamentarians.
5. The Turkish Grand National Assembly, the sole authority to enact laws, will use its power to monitor more effectively, through the laws it will enact and mechanisms of research, inquiry, written question and investigation.
6. Under this system, the President will be the head of the State and the executive organ, thus there will not be duality in terms of the executive power.
7. The President who was previously unaccountable and vested with many powers by the Constitution, will become accountable before the Parliament and the Nation. In other words, no authority or individual with powers shall be held unaccountable in the model of "Presidential System of Government".
8. "Presidential Decree", which will function in place of the "decree of Council of Ministers" under the current system, will entitle the President to make regulations and its framework is expressly indicated in the Constitution.
The area and limits of this legislative act is framed as follows:
 - 'Presidential Decree' shall be issued only on the matters related to the executive power,
 - Fundamental rights, individual rights and duties, political rights and duties shall not be regulated by the Presidential Decree,
 - Presidential Decree shall not be issued concerning the subjects which should be regulated only by law pursuant to the Constitution and subjects which are explicitly regulated by law.
 - If the Presidential Decree and laws provide different provisions, the provisions of the law will apply,
 - In the event that the Assembly enacts law on the same subject, the Presidential Decree will be null and void.In other words, if the law and decree provisions contradicts on certain subjects, the law provisions will always prevail.
9. The power to propose bills concerning "budget and final account" is the only legislative authority vested with the President.
10. The President will no longer be obliged to break the relationship with his/her political party. Thus, "Presidential System of Government" will be adopted where the ties of the President with his/her party continue. Lifting this obligation means removing the obstacle to the right of political participation.
11. In principle, the President can be elected for only two terms.
12. The most important monitoring mechanism and the indicator of the democratic character of the "Presidential System of Government" is the regulation regarding the existence of separation of powers and the fact that elections to the executive and legislative organ will absolutely be held together.
13. Democratic order will be safeguarded against the political tutelage.

14. With the adoption of this system, the inability to form a government will be overcome.

15. Military justice will be lifted excluding the military disciplinary courts, thus a unity in judiciary will be established.

16. The public's expectations will be met by this new legal order more swiftly and the legal order will function more effectively.

17. An effective executive organ that acts faster will overcome the cost increase emanating from the time loss, focus on producing resource, thus the process of economic growth and development will accelerate.

18. Decisions as regards security will be taken more swiftly.

19. Through this new system in Turkey which is comprised of a more comprehensive stance and attitude, Turkey will gain a stronger and more effective representation before the international community.

20. The principle of separation of powers will be implemented in a more powerful manner contrary to the system in force today.

21. The new regulation does not allow the conflicts between legislative and executive powers to be left unsettled. Elections to the two organs will be held together, thus conflicts will be resolved under the initiative of the Nation.

22. The desired system named 'The Presidential System of Government' which will be put into effect along with the above-mentioned amendments complies with the societal and political dynamics and historical background of Turkey.

VI. MAIN QUESTIONS TO BE DISCUSSED IN ANKARA ON 20-21 FEBRUARY 2017

1- What is the main inspiration of this constitution? Has a committee of experts and professors been established to help draft it due to its importance? Were there consultations with civil society?

Since the transition to multi-party democratic government in Turkey in 1946, Turkish democracy has survived several military coups or coup attempts. Since the parliamentary system in force does not fully comply with the historical, social and cultural structure of the society, the elections have been renewed and the governments have changed frequently, thus leading to political, economic and social depression. Therefore, the government system of Turkey and Turkish Constitution have long been debated in each segment of Turkish society. In this sense, no society in the world may have ever held discussions, for such a long time and in such intense environment, with respect to the government system and the Constitution as Turkey does. In Turkey's parliamentary system, the presidential elections have always become problematic. For instance; the failure to elect the President had been made the reason for the 1980 military coup. After this military coup, the 1982 Constitution which was drafted by the pro-coup soldiers and is still in force envisaged that the general of the army who led the coup d'état was to become the President. Therefore, contrary to democratic parliamentary systems, the President was granted with broad authority as in the presidential systems, and was also provided with unlimited non-accountability and impunity. Conflicting with the nature of the parliamentary system, certain authorities which were not granted to the President even in semi-presidential systems were provided to the non-accountable President. This situation was also criticized by several academicians and nongovernmental organizations upon the entry into force of the Constitution.

Following the amendment introduced upon the crisis which broke out in the presidential elections in 2007, the President could be directly elected by the public, which completely diverted the government system away from the parliamentary system. This situation brought about political disagreements between the President who was granted with broad authority but was held non-accountable and the Prime Minister. On the contrary, it is clear that the trouble-free functioning of the system cannot be ensured on the basis of the capacity of persons to get along with one another. Therefore, it was inevitable to solve this

anomaly in the system. Since the procedure of popular voting was adopted for the election of the President in Turkey in 2007, the constitutional amendment has been intensely discussed by people from all strata of society, notably the political and academic circles.

Political parties, non-governmental organizations and academicians hold numerous meetings, conferences and seminars in order to solve this problem arising from the Constitution. Within this framework, 19 different constitutional amendments have been drafted and several different solution proposals have been put forward. AK Party which has been in power as one party since 2002 has taken each opportunity to indicate that this problem can be solved only by implementing the presidential or semi-presidential system. Under the leadership of AK Party, the Committee on Constitution comprised of representatives of all political party groups in the Assembly was formed under the umbrella of the Turkish Grand National Assembly (TGNA) in 2011 and has carried out intense works and negotiations since then in order to ensure that a completely civilian and democratic Constitution can be established. Non-governmental organizations have also taken part in these works; meetings have been held and polls have been conducted across the country in order to find out what kind of Constitution and government system would be most suitable and democratic for Turkish public.

Within this framework, public service announcements have been prepared and participation has been promoted through the media. Correspondence has been exchanged via mail with 165 universities, 78 bar associations, 60 political parties, 18 unions of municipalities, 17 public professional organizations, 6 associations of neighbourhood representatives, 4 parent organization of unions of employees and employers, the Radio and Television Supreme Council, the Provincial Service Unit and the Department of Human Rights of the Office of the Prime Minister. Opinions have been requested via e-mail from 14,538 associations, more than 4,000 foundations, 1,700 local and national radio outlets and 197 local television channels. The meetings titled «*Turkey Speaks*» held on the Constitution Platform have been supported. Furthermore, sub-committees have been formed in order to give an ear to nongovernmental organizations, universities and unions. The TGNA has made efforts to build a website compiling all these works and collected tens of thousands of pages in this respect.

While debates were ongoing among the public on this matter, Turkey faced an unprecedented, reactionary, fascist and compelling coup attempt on 15 July 2016 which was attempted by Fetullahist Terrorist Organization (FETO) infiltrating the state institutions and all strata of society for more than 40 years. Turkish people took to the streets upon the calls of the democratically elected President and Prime Minister and risked their life to resist the aircraft, tanks, artilleries and heavy weapons with an extremely pacifist posture and to suppress the coup attempt.

During this resistance, almost 250 innocent people were brutally martyred and thousands were severely wounded by the coup plotters. Millions of people from each segment of society, gathering in every province and district in Turkey for almost 2 months, protected democracy and demanded the state leaders to ensure that no similar coup attempt could take place once again. The protection of democracy by the public on 15 July 2016 was a public revolution as in the French Revolution in 1789. The Republic of Turkey has been reconstructed under the guidance of this civilian, pacifist and democratic public mobilization. Nothing will be possibly as it was in the past. It should be kept in mind that the right to draft the political constitution belongs to the nation which is the fundamental power. The duty of politicians and professionals is only to turn it into a written text.

In conclusion, the discussions about the change of government system do not constitute a problem arising from the cyclical and daily political matters. On the contrary, they are held for long years in all strata of Turkish society. After the bloody military coup

attempt on 15 July 2016, the internal and external threats faced by Turkey led the political parties and people from different views to come together and it was deemed obligatory to shift to a strong government model.

The model suggested with the proposal of the constitutional amendment is a rational model which has been developed, having regard to the suggestions of the nongovernmental organizations, universities and all shareholders, in order to benefit from the works of the aforementioned Committee on Commission.

2- Can you please clarify the powers of the President, notably of dissolution of parliament?

a) Authority to renew the elections

It should be primarily stated that the President is not authorised to dissolve the Parliament in the envisaged system but to bilaterally renew the elections. The bilateral renewal of the elections is a check and balance mechanism. While the first dimension of the instrument is that the President can renew the elections of the legislative power, the second conjuncture reveals that the legislative power can renew the presidential elections.

The renewal of elections will be possible upon the three-fifths majority of the total number of deputies in the Turkish Grand National Assembly or upon the decision of the President. Where the TGNA decides to renew the presidential elections, the parliamentary elections will also be renewed. Likewise, the presidential elections will be simultaneously renewed where the President decides to renew the parliamentary elections.

Where the Turkish Grand National Assembly decides to renew the elections in the second five-year term of the President, the latter will be able to run for re-election. The term of office of the Assembly and the President that are re-elected by such means is five years. However, the President cannot run for re-election if he/she uses his/her authority to renew the elections under the second term of presidency. The purpose of this amendment is to prevent the Assembly from arbitrarily shortening the term of office of the President who has the right to be elected for maximum two terms (ten years) by renewing the elections. As a consequence, both the TGNA and the President have the authority to renew the elections bilaterally and the elections of both powers will be renewed no matter which power exercises this authority.

b) New authorities granted to the President

While the executive power and its duties are performed by the President and the Council of Ministers under the current Constitution, the constitutional amendment stipulates that the executive power is granted to the President.

Therefore, the provisions relating to the Council of Ministers have been repealed from the relevant articles in the Constitution; a certain part of the powers of the Council of Ministers have been regulated as the powers of the President; some clauses of "decree laws" have been amended as "presidential decrees" and accordingly, the duties and powers of the President have been amended to exclude appointing the Prime Minister and accepting his/her resignation, appointing and dismissing ministers on the proposal of the Prime Minister, presiding over the Council of Ministers or calling it to meet under his/her chairpersonship whenever he/she deems it necessary and these duties and powers have been regulated in compliance with the new system.

According to the envisaged system, the President is authorised to; have the executive power alone, give messages to the Assembly about domestic and foreign policy of the country, appoint and dismiss Vice-Presidents and ministers, appoint and dismiss high level State officials, and regulate the procedures and principles relating to the appointment of these, by presidential decrees, determine the national security policies and take the necessary measures, issue presidential decrees on matters relating to the executive power, issue by-laws in order to ensure the implementation of laws providing that they are not contrary to these laws.

On the other hand, the authority granted to the President is not unlimited and this authority has been regulated in detail under the Constitution. According to this;

✓ The fundamental rights, individual rights and duties under Chapter II and the political rights and duties under Chapter IV cannot be regulated by the presidential decrees.

✓ No presidential decree can be issued on the matters especially regulated by law under the Constitution.

✓ No presidential decree can be issued on the matters clearly stated in the law.

✓ Provisions of law prevail in case of conflict with the presidential decrees.

✓ The presidential decrees become null and void where the Turkish Grand National Assembly enacts a law on the same matter.

✓ The presidential decrees are subject to the review of the Constitutional Court. They come after the laws in norms hierarchy.

Since the Military Court of Cassation and the Military High Court of Administration are abolished by the constitutional amendment proposal, electing members for these courts have also been excluded from the duties and powers of the President.

The President will perform the duties of selection and appointment and the other duties and exercise the powers prescribed by the Constitution and the laws.

3- Can the President apply to the Constitutional Court in respect of laws or parts of laws?

In the proposal, as in the current system and the Constitution still in force (Art. 104), the President has the power to appeal to the Constitutional Court for the annulment of part or whole of certain provisions of laws and the Rules of Procedure of the Turkish Grand National Assembly on the grounds that they are unconstitutional in form or in content.

4- Can you please clarify the possibility of extending the President's second mandate for more than a third time (Article 116)?

There is no such thing as the extension of the second term of the President. However, in the event that the Assembly decides to renew the elections before the termination of President's second term in office, the President can once again be a candidate. It is not true to express it as an extension of the term of office. In other words, in the second term of the President, if the Grand National Assembly decides to renew the elections with a 3/5 majority (360 deputies) before the termination of second term of office, the President can only once again be a candidate. Here, in the case the Grand National Assembly decides to renew the elections in the second term of the President, it is aimed to give the current President the opportunity to be re-elected and therefore, that the public to check whether or not the Grand National Assembly exercise its power in an accurate manner and the public to confirm the democratic legitimacy.

This is not in question where the President calls an election in his/her second term. In other words, it is not possible for the President to be elected for one or more terms by renewing the elections.

5- What is the rationale for removing from Article 101 the sentence about the severing of links between the president and his/ her party?

Political parties are the indispensable elements of democracy. In democratic systems, the national will appears through political parties. In countries that are governed either by the parliamentary system or the presidential system, the executive organ's contact with the public, which is the source of the democratic legitimacy, is provided through political parties. With the Constitutional amendment, it is foreseen that the executive power in Turkey will be exercised by the President. In this case, it is the natural consequence of the system that the President, who represents the executive organ, has a link with the political party. Since it is an obligatory consequence of the new system that the President who is beyond a symbolic figure, who has political responsibility and needs popular votes in the elections to be elected will act together with a political party. For example; In the United States and in France, links between the presidents representing the executive organ and their political parties remain. This situation should not be a problem in terms of democracy. As a matter of fact, the link with the party does not necessarily have to remain and, moreover, it's not a necessity to continue that link as a leader of the political party. As a requirement of democracy, this should be left to the political parties' own preference.

6- What is the legal basis for the parliamentary immunity of vice-presidents and ministers?

In the new system, two different procedures have been envisaged for the criminal liability of Vice-presidents and ministers. Parliamentary immunity has been granted to the Vice-Presidents and ministers as well as the deputies so that they can perform their duties under no pressure but certain mechanisms have been envisaged to prevent them from becoming fully non-accountable.

In paragraph five of Article 106 of the Constitution, it is stipulated that Vice-Presidents and ministers shall be subject to parliamentary investigation concerning their task-related offences. As regard to mentioned offences, accusation and voting conditions required for Vice-Presidents and ministers by the TGNA to refer the case to the Supreme Court are the same with those of the President. Accordingly, the Assembly may make accusation against Vice-Presidents and ministers with absolute majority and may decide to refer the case before the Supreme Court with two-thirds majority of the total number of members.

It is stipulated that Vice-presidents and ministers shall enjoy parliamentary immunity concerning the offences not related with their tasks. Vice-presidents and ministers shall also enjoy from the provisions on immunity stipulated in Article 83 of the Constitution. Accordingly, the provision "A deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the Assembly decides otherwise. This provision shall not apply 39 in cases where a member is caught in flagrante delicto requiring heavy penalty and in cases subject to Article 14 of the Constitution as long as an investigation has been initiated before the election. However, in such situations the competent authority has to notify the Turkish Grand National Assembly of the case immediately and directly" shall also be valid for Vice-presidents and ministers. At this point, concerning the non-task convictions, the Assembly may decide, by simple majority, to lift the immunity of the concerned persons upon the order of the judicial organs. This is only an opportunity recognized for the duration of the crime investigation. There are no exceptional regulations regarding responsibilities arising from private law.

7- Can ministers/vice-presidents be members of parliament? Do they need to be members of parliament?

As a rule, it is not compulsory for Vice-presidents and ministers to be appointed from among deputies. Since a strict separation of powers is envisaged in the government system brought, it is accepted that, in that case deputies are appointed as Vice-presidents or ministers, their membership of the Assembly will terminate.

8- Is there a hierarchy between vice-presidents?

In the new system, more than one Vice-president can be appointed. However, there is no provision in the Constitution concerning the hierarchy among Vice-presidents. The duties and responsibilities of Vice-presidents shall be determined by the President. As in all the presidential systems in the world, the President has been granted with the executive power alone. Therefore, the Vice-Presidents and ministers will all be accountable to the President but there will be distribution of work and roles between them.

9- About the criminal responsibility of the President: will the Constitutional Court be competent to decide upon ordinary criminal offences possibly committed by the President? Why not the Supreme Court?

The jurisdiction to try the President for non-task offenses belongs to the Constitutional Court in the capacity as the Supreme Court. The Constitutional Court acts like a penal court in the trial it conducts in the capacity as the Supreme Court and will apply the norms of criminal prosecution and, the prosecution authority shall be represented by the Office of Chief Public Prosecutor of the Court of Cassation.

On the other hand, also in the current system, the Constitutional Court in its capacity as the Supreme Court shall try, for offences relating to their tasks, the President of the Republic, the Speaker of the Turkish Grand National Assembly, members of the Council of Ministers; presidents, members, chief prosecutors and deputy chief public prosecutor of the Constitutional Court, High Court of Appeals, Council of State, High Military Court of Appeals, High Military Administrative Court, presidents and members of High Council of Judges and Prosecutors and Court of Accounts (Article 148/6 of the Constitution). The task of carrying out proceedings in its capacity as the Supreme Court has not been entrusted to the Constitutional Court for the first time. In its capacity as the Supreme Court, the Constitutional Court carried out various criminal proceedings with respect to the President and ministers on different dates. The difference at this point is that criminal liability has been envisaged for the President unlike the current system and the relevant proceedings are carried out by the Constitutional Court in its capacity as the Supreme Court.

10- What is the meaning of the sentence: the provisions of the law "shall prevail" in case of conflict with a presidential decree (Article 104)? Does the presidential decree become null and void in such a case? Who decides in case of such a conflict?

The provisions of law shall prevail without hesitation where the presidential decrees contradict the laws. This clause is a mandatory provision of the Constitution. According to general principles of law, the regulations at the lower status have to comply with the regulations at the higher status in norms' hierarchy. If there is controversy between them, the superior norms are deemed applicable and everyone has to abide by this provision in the state of law.

According to the envisaged regulation, it will be possible that the presidential decrees will be subject to judicial review by three different means. The first one is that, if the Presidential decree is considered to be unlawful, the decree should be reviewed by the Constitutional Court upon the demand of two political parties with the highest number of members in the TGNA, or at least 1/5 of total number of members. Again, pursuant to Article 152 of the Constitution, courts will be able to demand the Presidential decree to be reviewed by the Constitutional Court through concrete norm review. Finally, in case it is considered that decrees contradicting to laws have been implemented by the administration, those interested may demand judicial review of the administrative action. Moreover, if the courts decide that the law and Presidential decree contradicts in the resolution of a dispute, the enforcement of the provision of law is the governing law. This governing law also applies to anyone who will implement the laws and the presidential decrees, notably the administration.

11- Does the prevalence of ordinary laws over Presidential decrees apply also in respect of new laws affecting core executive competencies, for example state security policy (Article 104/13)?

Upon the entry into force of the envisaged system, it will not be possible for the current laws to cease to have effect automatically. The current laws will continue to apply in the same manner. According to this, no presidential decree may be issued on a matter regulated by the laws. In case of conflict between the Laws and the Presidential Decree, the provisions of the Law shall prevail. Every regulation that has enacted as a law is above the Decrees in the hierarchy of norms.

12- Article 159 specifies how regular members of the CJP are appointed. Are substitute members appointed and if so, by whom?

No substitute member concept has been included in the new CJP structure. In case of a vacancy in the membership, selection of a new member is envisaged with the same procedure and by the same organ within one month. There is no substitute member assigned by the President to the Council in the current system. Substitute membership exists in the current system since the election process for the first category judges and prosecutors lasts long and it is difficult to hold elections for all judges and prosecutors for each time. However, in the envisaged regulation, substitute membership has not been provided since the Parliament and the President can select members in a short time for each membership which falls vacant.

13- Why is it no longer foreseen that the judges themselves may elect members of the Council of Judges and Prosecutors?

Before the Constitutional amendment in 2010, the members of the High Council of Judges and Prosecutors were selected by the President from among the members of the Court of Cassation and the Council of State according to a certain procedure. The role of the President in determining the members of the HCJP has been criticized for some reason, such as the absence of any influence of the parliament.

With the Constitutional amendment made in 2010, the system was revised in such a way that the vast majority of its members are to be determined by an election from among judges and prosecutors serving in first instance courts. While the legislator wanted the High Council of Judges and Prosecutors to have a pluralistic structure, the annulment decision of the Constitutional Court's on the article related to the election procedure resulted in the election system becoming a list procedure, the organized structures exploiting the electoral system and seizing the majority in the High Council of Judges and Prosecutors.

In addition, elections between judges and prosecutors led to the emergence of competition, and thus political, religious and ethnic sub-identities to become visible. This situation has led to grouping, polarization and politicization among the judges and prosecutors. The public expectation for justice have been shaped depending on the political views of the judges and prosecutors and this has resulted in the damage of confidence in the judiciary in the society.

In addition, elections between judges and prosecutors led to the emergence of competition, and thus political, religious and ethnic sub-identities to become visible. This situation caused polarization among the judges and prosecutors and they became politicized. The public's expectation of justice started to change in accordance with the political stances of judges and prosecutors and unfortunately, this undermined the public trust in the judiciary.

Moreover, we have encountered the terrible reality that the well-organized Fethullahist Terrorist Organization (FETO) corrupted the democratic system subtly and captured most of the members of the High Council of Judges and Prosecutors. As the time passed, FETO used the judiciary as a tool to seize all state organs.

As a result of the reasons mentioned briefly above, amending the system of the High Council of Judges and Prosecutors by re-organizing its structure, became an obligatory step. The purpose of the change envisaged in the structure and electoral procedure of the Council is primarily to prevent the judiciary from being politicized, prevent another attempt to seize this institution which can be launched by organizations with secret goals such as FETO and to increase the effectiveness of the parliament that is a reflection of the national sovereignty, in the elections to the Council of Judges and Prosecutors (CJP), in compliance with the recommendation of the Venice Commission in its draft opinion regarding the High Council of Judges and Prosecutors draft law of 2010.

By this amendment, High Council of Judges and Prosecutors is amended as Council of Judges and Prosecutors, the number of members is reduced from 22 to 13. The Minister of Justice and his Undersecretary will be members of Council of Judges and Prosecutors, 4 of the members will be selected by the President and 7 of which by the Turkish Grand National Assembly. Under the comparative law, it is observed that there are many different systems concerning the judges and prosecutors appointments and personal rights. Even in some western democratic countries, such a council of judges-prosecutors does not exist. It should not be forgotten that Council of Judges and Prosecutors is not a judicial institution but an institution for the administration of judiciary. The important thing is establishing a system which would provide impartiality and independence within the judiciary.

14- Will you please provide the translation of Provisional Article 21 (concerning the date of the next presidential and parliamentary elections, the appointment of the HCJP members following the entry into force of the amendments, the transfer of military judges to other courts) which has not been included in the official translation?

PROVISIONAL ARTICLE 21

A) 27th Legislative Term parliamentary elections to the Turkish Grand National Assembly and Presidential election shall both take place on 3/11/2019. The members of the Turkish Grand National Assembly and President continue to hold office until the date of the elections. In the event that the Assembly decides to call an election, 27th Legislative Term Parliamentary elections and Presidential election take place on the same day.

B) Within six months at the latest from the date of promulgation of this Law, the organizes other legal regulations and amendments to the Rules of Procedure of the Assembly as required by the amendments brought by this Law. Amendments which are stated to be made by the Presidential decree, will be brought by the President within six months at the latest from the date of his/her taking office.

C) According to the amendment made to Article 159 of the Constitution, election of members to the High Council of Judges and Prosecutors shall be held within thirty days at the latest and they shall take office on the working day following the fortieth day after the date of entry into force of this Law. The applications for the memberships shall be made to the Office of the Speaker of the Assembly within five days as of the entry into force of this Article. The Office of the Speaker conveys the applications to the Joint Committee composed of members of the Committee on Justice and Committee on Constitution. The Committee shall elect three candidates for each vacancy with a two-thirds majority of total number of members within ten days. If the procedure of electing candidates cannot be concluded in the first round and two-thirds majority cannot be obtained, second and third round elections are held; in these rounds, the candidate acquiring the three-fifths majority of the total number of votes is elected. If the candidates cannot be elected in this round as well, the procedure of electing candidates shall be completed by choosing a candidate by lots among twice the number of candidates who have received the highest number of votes in the third round. Plenary of the Turkish Grand National Assembly concludes the elections within fifteen days in accordance with the same procedures and principles. The present members of High Council of Judges and Prosecutors shall hold office until the date on which the new members take office and take actions pursuant to the provisions in the Law in force. New members shall exercise their duties in accordance with the provisions of the existing Law which are not unconstitutional until an amendment is brought to the relevant Law. Among those whose memberships were expired and were not re-elected to the High Council of Judges and Prosecutors, the ones selected among judges and prosecutors of civil judiciary shall be appointed as members of High Court of Appeals upon their requests and the ones selected among judges and prosecutors of administrative judiciary shall be appointed as members of Council of State by the High Council of Judges and Prosecutors; the ones elected among academicians and lawyers shall be appointed as members of Council of State by the President. During such elections and appointments, whether there is enough vacancy in cadres is not considered. Instead, enough vacancies are added to the cadres in High Court of Appeals and Council of State for the number of elected and appointed members.

D) Memberships of those who are elected as members of Constitutional Court from the High Military Court of Appeals and High Military Administrative Court, exist until their memberships are expired for any reason.

E) As of the date of entry into force of this Law, High Military Court of Appeals, High Military Administrative Court and military courts are abrogated.

Within four months as of the entry into force of this Law; in accordance with their choices and acquired rights, Heads, Chief Prosecutors, Second Heads and members as well as other military judges (excluding reserve officers) from the category of military judges in High Military Court of Appeals and High Military Administrative Court;

a) May be appointed as judges or prosecutors of civil or administrative judiciary by the High Council of Judges and Prosecutors.

b) As regards their salaries, additional payments, allowance, judicial allowance, additional allowance, financial and social rights and aids along with their other rights, judges and prosecutors of civil or administrative judiciary shall be appointed in their existing categories, to cadres of legal service under the Ministry or Presidency of General Staff, by the Ministry of National Defence and as regards the rights and obligations other than those

stated above, they shall be appointed, provided that the legislation provisions on the date of entry into force of this Law continue to apply. The procedures and principles regarding the compensation to be paid to those who are entitled to pension and will retire from their office on their own accord before the retirement on the age margin, shall be regulated by law.

Of the files examined in the annulled military judicial authorities, those at the stage of examination of legal remedy shall be submitted to High Court of Appeals or Council of State where relevant, other files shall be submitted to the civil or administrative judicial authorities with jurisdiction and competence, where relevant, within four months.

F) Decree Laws, regulations, guidelines issued by the Prime Ministry or Council of Ministers as well as other regulatory acts which are in force on the date of entry into force of this Law shall be valid unless annulled. Articles 152 and 153 continue to apply as regards Decree Laws in force.

G) Powers granted to the Prime Ministry and Council of Ministers through the laws or other legislations shall be exercised by the President until an amendment is made to the relevant legislation.

H) Last paragraph of Article 67 of the Constitution shall not apply regarding the first mutual Parliamentary and Presidential elections which will be held following the date of entry into force of this law. "

15- Were there irregularities in the procedure of adoption of the constitutional amendments in parliament?

The Draft Law on the Constitutional Amendments was passed in the Constitutional Committee and Plenary of the Assembly in compliance with the provisions under the Constitution and Internal Regulations of the Assembly. The free will of the deputies was represented in the secret ballot held in the Assembly and the majority required by the legislation was respected. On the other hand, although the opposing parties had the right to challenge the process before the Constitutional Court, they decided not to lodge application to the Constitutional Court that is authorized to examine whether the amendments complied with the procedure in the legislation.

16- How will Article 10 of Decree Law 687 of 9 February 2017 affect the referendum campaign?

The provision of the Law No. 298 which was revoked by Article 10 of the Decree Law No. 687, provided sanctions to be imposed in case media outlets did not comply with the restrictions as regards making propaganda of elections during the electoral period. This provision provided for severe sanctions to be imposed to the private media outlets and their directors. Considering the fact that the mass media and internet have developed to a great extent at the present time and foreign broadcasts related to such matters cannot be banned for technical reasons, such restrictions prevented the exercise of media freedom by the local radio and television companies in a disproportionate and unjust manner.

The annulment of Article 149/A of the Law No. 298 put an end to sanctions imposed on private radio and television broadcasts during the elections. Except for state televisions, this amendment aims to ensure a free environment for the broadcasts of private radio and television companies during the elections without feeling anxious about sanctions such as suspension of the broadcast or administrative fine. Just as the political parties intending to make propaganda for 'no' vote and other platforms influencing the public opinion will enjoy this free environment during the referendum, so will those who will make propaganda for 'yes' vote. This revoked provision does not include any regulation favouring one side over the other.

Through the regulation made by the Decree Law, obstacles to media freedom were removed regarding the private media outlets, thus it was aimed to establish a more free environment for the broadcasts and to ensure that public receives reliable information during the elections. This regulation also means the enhancement of freedom of expression for individuals.

17- In the second round of the Presidential elections, if one candidate cannot run, the one following in the order of the results of the first round will step in as a candidate (Article 101 § 6). Why not repeat the elections in this case?

The following provision 'in the event that one of the Presidential candidates who qualified for participating in the second round does not stand for the elections for any reason, the one following in the order of the results of the first round will step in as a candidate' is also available in the existing Constitution. The relevant provision is not brought for the first time to the Constitution, it was also in force during the election of the incumbent President. In the event that one of the Presidential candidates who qualified for participating in the second round does not stand for the elections for any reason, it is ruled that the elections will continue by the replacement of candidate, as it would take too much time to re-start the electoral process. This process particularly aims to conclude the Presidential elections and to establish the executive organ of the State as soon as possible. For, it is not certain which candidate will not be able to be elected in the end and the candidate who stepped in is one of the candidates participated in the first round.

Besides, if a candidate who qualified for participating in the second round withdrew his/her candidacy on purpose and the elections were renewed, the candidate who is not likely to be elected during the process would withdraw from the elections, the elections would be renewed every single time and eventually the system would become dysfunctional resulting in a chaotic environment.