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Changes in Presidential Election Law in Turkey – Progress in the Democratisation Process?

Abstract: The adoption of the new presidential election system in Turkey has strengthened the democratic legitimacy of the head of state, by virtue of the presidency now being determined by popular vote. The new law, however, has many democratic deficits. Moreover, the circumstances of its adoption as well as coupling it with the introduction of a particular type of presidential system, tends to indicate that the intentions of the AKP leaders have less to do with the willingness to democratize the country than with political interests. Paradoxically, as a result, a theoretically more democratic presidential election law can open the door for the enhancement of authoritarian tendencies in the Turkish state. One consequence of introducing the presidential system to strengthen the president's office by way of popular vote, is that it can create too strong an executive power which is not sufficiently balanced by other institutions forming the Turkish political system – both nationally and at regional/local level.

Keywords: president, election law, elections in Turkey, democratization, presidential system, politicisation
Słowa kluczowe: prezydent, prawo wyborcze, wybory w Turcji, demokracyzacja, system prezydencki, upolitycznienie

1. Introduction

In the Republic of Turkey, after the Second World War, the choice of the country's president was made by the members of the Turkish parliament – the Grand National Assembly of Turkey, in accordance with the Constitutions of 1924, 1961 and 1982. Such a method of selecting the head of state was compatible with the country's parliamentary political system. General elections took place only in the case of Kenan Evren; this was the outcome of a particular situation which had arisen after a coup in 1980. Subsequent Presidents of Turkey were once again appointed by the Parliament¹.

1 A. Szymański, System konstytucyjny Turcji, Warszawa 2006, pp. 5-15 & 54.

However, amendments to the Turkish fundamental act, accepted first by the Parliament (10th of May 2007) and subsequently by the citizens in a referendum (21st October 2007) allowed for the adoption of the electoral law concerning presidential elections, enacted on 26th January 2012², major change was the introduction of direct general elections of the President. On the 10th August 2014, in the first round [of the elections], Turkish citizens elected President Recep Tayyip Erdoğan – the leader of the governing (since 2002) Justice and Development Party (AKP, *Adalet ve Kalkınma Partisi*)³.

Sources written on the subject indicate that general presidential elections “give the head of state independent and democratic legitimacy, thus effectively protecting it from being dominated by the parliament and the political parties”⁴. In a word, they contribute to progress in democratic consolidation, as they give citizens the right to elect another fundamental state body, as well as strengthening the (real) division of power and the independence of the Parliament in exercising its legislative and control function. At the same time, they highlight that this type of measure may prove dysfunctional for the democratic nature of the political system if the said system at the same time is lacking certain balancing elements such as the strengthening of one of the main state organs of executive power. This concerns, in this context, certain conditions (political, social or economic) conducive to democracy, as well as specific features of the political system, such as: federalism and the effective principle of the division of power and judicial control⁵. The aim of this article is to answer the question whether the adoption of the new electoral law, including the introduction of direct presidential elections, will aid the democratization process in the country or, on the contrary, will be conducive to the development of authoritarian tendencies which have been (again) noticeable in Turkey over the last few years. The author will test the hypothesis that the new legislation, despite strengthening the democratic legitimacy of the head of state, will be a “critical juncture”, potentially leading to Turkish issues with democracy being exacerbated. This will be determined by the political conditions at the time the new law was adopted and is being enacted, as well as issues with the political system that exist in Turkey, which do not provide checks and balances to the strengthened position of the head of state as an executive body.

2 Cumhurbaşkanı Seçimi Kanunu, Kanun No. 6271, Kabul Tarihi 19/1/2012 (Resmi Gazete, 26 Ocak 2012, No. 28185), <http://ilo.org/dyn/natlex/docs/SERIAL/91819/106649/F1826753979/91819.pdf> (accessed on: 12.02.2015).

3 Erdoğan won 51.79% of votes. Data after: Yüksek Seçim Kurulu, www.ysk.gov.tr/ysk/content/conn/YSKUCM/path/Contribution%20Folders/HaberDosya/2014CB-Gecici-416_d_Genel.pdf (accessed on: 30.09.2014).

4 A. Pułło, System prezydencki, (in:) M. Domagała (ed.), *Konstytucyjne systemy rządów*, Warszawa 1997, p. 73.

5 *Ibid.*, pp. 73-74.

The first part of this article will outline the presidential elections procedure – before the changes and after the changes have been introduced. This will be followed by the analysis of factors – formal and political – critical to providing an answer to the issue of the significance of the new legal provisions of presidential elections for democratisation. This will require analysis of the contents of legal acts, to indicate functional and dysfunctional elements for the democratic character of the political system, as well as utilising aspects of the analysis of the decision making – that is considering the factors behind the decision to change electoral law and the choice of how to interpret the results of these changes.

2. The outline of electoral procedures in Turkish presidential elections

The Turkish Constitution of 1982 has a simplified procedure for electing the President as compared to the Constitution of 1961. Under the provisions of Art. 101-102 of the 1982 fundamental act, the Grand National Assembly of Turkey had been, until recently, electing a president for the period of seven years, from among parliamentarians and Turkish citizens with passive electoral rights. All of those had to have a degree and be over 40 years of age.

Fielding a candidate from outside the Parliament was possible with a written application from at least one fifth of all the MPs. The period between presenting the presidium of the Assembly with the list of candidates and the end of the elections was 30 days. In order to be elected, the presidential candidate had to win two thirds of the vote of the total number of MPs in a secret ballot. If, in the course of the two rounds of the elections, which were held at least two days apart, no-one got the required majority, the third round was held, decided by the absolute majority of votes of the total number of MPs. If the outcome was undecided even in the third round, there was a fourth round, with the two candidates from the third round with the best results. If it proved impossible to choose a President from between the two candidates with the absolute majority of votes, the Parliament was dissolved and fresh elections were held. The possibility of such outcome forced MPs to seek compromise.

Nobody could hold the office twice. The President was required to be neutral, which meant that, as well as resigning his parliamentary seat (if held), the president had to sever links with his own party. The President was sworn into the office in front of the National Assembly (Art. 103 of the Constitution). In case of an illness or if the President left the country, or if the office became vacant due to death, resignation or any other reason, he was replaced by the chair of the Assembly until the new head of state was elected (Art. 106 of the Constitution)⁶.

6 Türkiye Cumhuriyeti Anayasası, Kanun No. 2709, Kabul Tarihi 7.11.1982 (Resmi Gazete, 9 Kasım 1982, No. 17863), www.tbmm.gov.tr/anayasa.htm (accessed on: 10.02.2007); comp. A. Ławniczak, Prawo wyborcze na urząd prezydenta w Turcji, (in:) S. Grabowska, R. Grabowski

The principles of the new Turkish presidential elections law are set out in the Constitution (mainly under Art. 101-103 and Art. 67) and expounded in the Presidential Elections Act and the much amended *Law on Basic Provisions on Elections and Voter Registers*⁷. The President is still elected from among parliamentarians over 40 who hold a degree, or from among Turkish citizens who meet the above criteria and who have passive electoral rights to the Parliament. The main difference is that the President is now elected by the nation, not the MPs. Therefore the provisions of the law on elections and voter registers started to apply. Active electoral rights in presidential elections are held by Turkish citizens over 18 years of age. This does not apply, however, as with Parliamentary elections, to serving soldiers and junior officers, students of military academies and those convicted by a court and serving a custodial sentence with the exception of those convicted of an unintentional offence (in which case voting takes place in a penal institution under the supervision of a qualified judge). Voting is mandatory (which, as with other elections is not always enforced in practice).

In May 2012, therefore, after the Parliamentary elections of 2011, the provisions of the above 1961 Act were amended in order to make it easier for Turkish citizens living abroad to vote. On the basis of the amended legislation a special register is created, with the names of persons registered in Turkish consulates and embassies. This register is separate from the central national electoral register, linked to the general, internet-based, register of residents serviced by the Turkish Home Office. Electoral commissions, consisting of five representatives of political parties and civil servants, are established in around 100 polling stations abroad. After the vote the ballot boxes are sent over to Turkey. Votes are counted together with national votes at a district level (Tur. *ilçe*). Elections abroad were held between 31 July 2014 and 3 August 2014. Their disadvantage was the underdeveloped system of information regarding registration (many people did not register and ultimately did not vote), which was reported by the Organization for Security and Co-operation in Europe (OSCE) before the elections⁸.

(eds.), *Prawo wyborcze na urząd prezydenta w państwach europejskich*, Warszawa 2006, pp. 271-281; A. Szymański, *Prezydent w systemie politycznym Republiki Turcji: na tle aktualnej debaty ustrojowej*, (in:) T. Mołdawa, J. Szymanek (eds.), *Parlament. Prezydent. Rząd. Zagadnienia konstytucyjne wybranych państw*, Warszawa 2008, pp. 134-135.

7 All current legislation on presidential elections in Turkey after: *Konstytucja Republiki Tureckiej*, tr. K. Wojciechowska-Litwinek, D. Haftka-Işık, K. Stanek, Ö. Emiroğlu, Warszawa 2013; *Cumhurbaşkanı Seçimi Kanunu...*, *op. cit.*, *loc. cit.*; *Seçimlerin Temel Hükümleri ve Seçmen Kütükleri Hakkında Kanun No. 298*, Kabul Tarihi 26.4.1961 (Resmi Gazete, 2 Mayıs 1961, No. 10796), www.mevzuat.gov.tr/MevzuatMetin/1.4.298.doc (accessed on: 10.02.2015).

8 Republic of Turkey. Presidential Election 10 August 2014, OSCE/ODIHR Needs Assessment Mission Report 7-9 May 2014, Warsaw, 3 June 2014, p. 6, <http://www.osce.org/odihr/elections/turkey/119439?download=true> (accessed on: 5.02.2015).

The presidential term was reduced from seven to five years and lasts until the new head of state takes the office. The same person may be elected to office again (it is possible to hold the office of the President of Turkey twice). Presidential candidatures, both from the Grand National Assembly of Turkey and from outside, need to be submitted in writing by at least 20 MPs. Political parties which have won more than 10% of the votes in parliamentary elections prior to presidential elections may submit a joint candidate.

Elections have to be held within 60 days of the end of term. The same number of days is applicable if the office becomes vacant for any reason other than the end of term. The elections are run and controlled, just like parliamentary elections, by the Supreme Electoral Council (consisting of seven members and four deputies elected by the judiciary for four years), county and district councils (elected for two years, the first ones consist of judges, the latter – persons appointed by political parties and civil servants apart from the chair – an experienced judge) and electoral commissions established for the duration of elections. Political parties may have their representatives in the top level electoral bodies, including the Supreme Electoral Council; however, they do not have the right to vote.

The electoral campaign lasts from the point of finalising the list of candidates (11 July 2014 with the last presidential elections) until the last evening before the elections day. The general rules for conducting the campaign are no different to presidential elections. In March 2014, an appropriate amendment of the law enabled running the campaign and having election materials in other languages than Turkish. A specific outcome with regards to presidential elections is refining the rules of financing the campaign. Candidates must not receive resources from political parties, just from individual citizens who set up a special bank account for this purpose. Loans are not permitted. Candidates are obliged to submit reports to the Supreme Electoral Council which controls the financial side of the elections (within ten days of the elections results) concerning campaign expenses.

In order to be elected, a candidate is required to gain an absolute majority of valid votes (which was accomplished in 2014 by Erdoğan). If they fail to reach this majority, a second round of elections takes place on the second Sunday after the first round. The second round is open to the two candidates with the largest number of votes. The winner is the candidate with the largest number of valid votes. Should one of the two candidates in the second round die, or be deprived of the passive electoral rights, their place is taken by the candidate with the second largest number of votes. What is of interest is that, in the second round, if there is only the one candidate, the vote takes the form of a referendum. Should the candidate receive the majority of valid votes, he becomes the President of Turkey.

Presidential candidates, other than the Prime Minister and ministers, must resign government posts. Just as before, the president elect must resign party membership to remain impartial. If they were elected from within the Parliament,

they give up their parliamentary seat. They are still sworn-in in front of the Turkish Parliament, under Article 103 of the Constitution. The provision for the president being replaced, if necessary, by the leader of the Parliament, under Art. 106 of the Constitution, remains unchanged.

3. Functional and dysfunctional elements of electoral law⁹

Certain measures adopted as part of the law on presidential elections in Turkey would indicate that it could be conducive to democratisation of the state. The abovementioned legal acts facilitate the participation of Turkish citizens living abroad and therefore have strengthened the common and general nature of the elections of the head of state. As indicated before, the disadvantage was an underdeveloped system of information regarding registration for the elections which resulted in a relatively low participation in 2014 elections. However, the OSCE assessment indicated that the change is positive. This assessment also included detailed guidelines for financing electoral campaigns, contained in the amended legislation, which re-inforced the principle of transparency. The OSCE also highlighted the fact that the campaign could be conducted in various languages and dialects, not just in Turkish, which again is significant for democratisation. This was important for Kurdish candidates, and could have been a factor (although not *the* factor) in Selahattin Demirtaş, the candidate of Kurdish political groupings led by the People's Democratic Party (HDP, *Halkların Demokratik Partisi*), getting 9.76% of the votes¹⁰.

However, the existing electoral law has many flaws with regards to the democratic character of the whole procedure of electing the President of Turkey. This is with regards to both the act of electing the President as well as the general electoral rules which apply in the case of presidential elections. The OSCE points out a number of deficiencies in this context. On one hand, the general nature of both passive and active electoral rights is limited. In the first instance, there is a lifelong exclusion on standing in elections for prisoners and those who have not completed military service (which is an important duty, and exemptions, for example, due to belief, are difficult to obtain). Moreover, the requirement of the minimum of 10% of the vote for the parties who wish to register presidential nominees limits the number of candidates standing for elections as well as the possibility for independent candidacy. This was reflected in the August 2014 elections where there were three presidential candidates. Ekmelledin İhsanoğlu theoretically stood as an independent candidate, but was supported to a greater or lesser degree by the two opposition parties – The Republican People's Party (CHP, *Cumhuriyet Halk Partisi*) and the

9 This chapter primarily after: Republic of Turkey. Presidential Election 10 August 2014, *op. cit.*, pp. 3-10.

10 Data after: Yüksek Seçim Kurulu, *op.cit., loc. cit.*

National Movement Party (MHP, *Milliyetçi Hareket Partisi*) and later by 11 other groupings. The higher education requirement raises some issues over the principle of non-discrimination. It is worth recalling that active electoral rights are limited in the case of prisoners (with exceptions) and the military. The new legislation is not a sufficient guarantee that the electoral register will not contain names of those not eligible to vote. This is due to electoral lists often lacking accurate data.

Moreover, electoral legislation acts do not sufficiently provide for regulating and controlling the bodies organising and running the elections. In practice, this causes lack of transparency in the work of these bodies as well as threatening impartiality in assessing electoral complaints. The lack of an appeals procedure over the outcome of a complaint based on a decision of the Supreme Electoral Council is also a concern. It is far from certain whether the right of Turkish citizens to submit individual complaints to the Constitutional Tribunal over the abuse of the fundamental rights and freedoms by public authorities, under Article 148 of the Constitution (after exhausting other means), applies here.

Another failing is that electoral law in presidential elections does not sufficiently provide for several issues concerning the elections campaign, significant from the perspective of democratic principles. The Law on Presidential Elections lacks sufficient detail, including on the role of political parties, which are the means of association for citizens, in the electoral process. This concerns various aspects, including media participation in the campaign. It remains undefined whether time on air should be allocated to individuals or to political parties. The absence of a clear definition of air time in presidential campaign led to abuses of the position in office and the exertion of influence over the media by Erdoğan. As the result, the AKP leader appeared on TV news three times as often as İhsanoğlu¹¹. The same applied to the issue of financing the campaign. Although this was to be done through private support from individual citizens, not from public resources, the lack of clear limitations of such support can in practice lead to significant differences in the sums expended, depending on the means of the candidate. This was perceivable in the August 2014 elections where Erdoğan, then the Prime Minister, received much greater financial backing than the other candidates, including, contrary to legislation, public resources. In terms of citizens' donation the AKP politician received over 24 million Turkish Lira, and İhsanoğlu – 2.1 million Turkish Lira¹².

11 Erdoğan used just over 47 thousand airtime units, İhsanoğlu – around 16 thousand. Data after: Erdoğan media ile beyin yıkıyor, “Zaman” of 19 August 2014 r., http://www.zaman.com.tr/gundem_erdogan-me-dya-ile-beyin-yikiyor_2238375.html (accessed on: 10.02.2015).

12 Data as of 3rd August 2014 after: Turkish Elections. Presidential Elections (August 2014), Rethink Institute, Washington DC, <http://www.rethinkinstitute.org/turkish-elections> (accessed on: 10.02.2015).

Political parties and independent candidates have the right to observe the course of the elections. However, there are no specific provisions for individual citizens and those from overseas playing the role of observers.

4. The issue of politicizing the electoral law

A negative phenomenon in Turkey is the fact that democratisation stops being the aim of the reforms and becomes the means to achieve other goals. The latter serve the political power struggle which results in greater and greater social and political polarisation, linked not only to deficiencies in democracy but also to the lack of political stability in the country¹³. The politicisation of legal reforms is noticeable with the law on presidential elections in Turkey. In answering the question of how this law contributes to democratisation of the Turkish state, it is necessary to indicate what motivated the AKP politicians who accepted the new system of presidential elections, later accepted by society in a referendum.

In order to do that, it is necessary to examine the circumstances that led to the change. On the 27th of April 2007 the first round of presidential elections took place in the Turkish Parliament, without a decisive outcome. The candidate of the ruling Justice and Development Party – then the foreign secretary Abdullah Gül failed to secure the required majority of two thirds of the votes; this was partly due to the opposition boycotting the elections (with a few exceptions). Gül seemed like a less controversial candidate than the Prime Minister Erdoğan. However, according to secular, Kemalist elites – namely the army – the large part of the judiciary and the civil service, as well as part of the intelligentsia and the media – the very likely presidential choice of a nominee of a party with Islamist roots would threaten the constitutional principle of secularism. The ruling party would have gained an institution whose task is to safeguard that principle. Moreover, the choice of the AKP candidate could have led to the secular elite losing not only the influence over executive power but also the judiciary. The president approves the nominations for the highest judiciary offices. Consequently, late on the evening of the 27th of April 2007, the high command issued a statement which was interpreted as a warning to the government, in which the army professed its readiness to defend the secular order. This was met with a vociferous protest from the AKP. The opposition CHP applied to the Constitutional Tribunal to have the first round of the elections declared invalid due to the lack of the required quorum of the two thirds of Members of Parliament. The Tribunal, under significant political pressure, approved the application on 1st May 2007; a decision that the Prime Minister Erdoğan described as a “blow to democracy”. In the re-run of the first round of the elections 6th May 2007 the required quorum was again not reached.

13 E. Alessandri, *Democratization and Europeanization in Turkey after the September 12 Referendum*, “Insight Turkey” 2010, No 4, p. 24.

Gül withdrew his candidacy just after, which made it impossible for the Parliament to choose the president. The Grand National Assembly of Turkey agreed to early elections, which were to take place on 22nd July 2007. The new parliament elected Gül for president on the 28th August 2007, in the third round of the elections¹⁴.

Before its dissolution, the Turkish Parliament passed amendments to the Constitution on 10th May 2007, introducing general elections of the President. This was mainly the initiative of the AKP, which wanted to open the door for the party's presidential candidate to be elected by the citizens and to avoid an early move by the opposition to obstruct this. The then President Ahmet Necdet Sezer vetoed the changes on 25th May 2007, officially due to concerns over the stability of the country as the result of having a strong president in opposition to the Prime Minister. The presidential veto was rejected on 31st May 2007. Therefore Sezer, on 15 June 2007, decided to hold a referendum over the proposed amendments to the Constitution, which was held in October 2007¹⁵.

It is clear that the AKP government, in striving for the introduction of general elections of the President, was not motivated by the desire to advance democratisation. At the time the pace of Turkish democratic reforms slackened noticeably. The Justice and Development Party did not have as the first priority strengthening the democratic legitimacy of the president (although officially the change was ascribed to the democratisation process), but a political interest, linked to the desire to take over another important state office. The very good results achieved by the AKP in the July 2007 elections would allow them to speculate that their candidate would enjoy the greatest support in the contest for the office of the President of Turkey, and that this would allow it to avoid the impasse and political perturbations, which may have been repeated if the head of state had continued to be elected by Parliament.

Another issue which would indicate that AKP actions were motivated by other matters than democratisation has been the use of the new law on presidential elections, mainly the introduction of the general elections, to justify a wider political project which, if implemented, may intensify authoritarian tendencies in Turkey. Erdoğan and many other AKP politicians would welcome the introduction of a presidential system, which in practice may lead to over-strengthening of the executive power at the expense of the legislative arm and the judiciary.

These plans did not appear at the time when AKP came to power. The presidential system was repeatedly debated in the media and during countless meetings and conferences before 2002. Reforms were even drafted on this issue, e.g.

14 A. Szymański, *Konsekwencje kryzysu politycznego w Turcji dla jej europejskich aspiracji*, "Biuletyn" (PISM) 2007, nr 22, http://www.pism.pl/files/?id_plik=582 (accessed on: 13.12.2007 r.).

15 Commission Staff Working Document. *Turkey 2007 Progress Report*, Brussels, 6.11.2007, SEC(2007) 1436, p. 7, http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf (accessed on: 11.12.2007).

in 1999-2000 President Süleyman Demirel commissioned the Turkish Foundation for Economic and Social Studies (TESEV, *Türkiye Ekonomik ve Sosyal Etüdler Vakfı*) to prepare such proposal¹⁶. There were many arguments for the introduction of a presidential system, quoted by Turkish politicians, academics or publicists in 1999-2007. Such a system was regarded by its supporters as a panacea for all the ills related to the faulty functioning of the parliamentary system in Turkey. They argued that the introduction of a presidential system would stabilise the Turkish political system. First of all, this would mean a technocratic, expert-led government and a strong presidential administration, independent of party political pressure and therefore more capable of solving Turkish problems. Secondly, it would have ended party favouritism and the fragmentation of the party political system – parties would have to join forces and support one of the two presidential candidates. The introduction of a presidential system would, according to its supporters, also enable strengthening of the democratic character of the Turkish political system. A president would be elected by the will of the nation. Therefore a presidential system would introduce the abovementioned elements; that is, a real division of powers, as well as guaranteeing a greater independence for the parliament in exercising its legislative and control functions. A strong president would be able to better protect the Republic and its principles, secularism or nationalism¹⁷.

So the introduction of a presidential system was strictly linked to presidential general elections – as per the two arguments above in favour of such a system of government. This was also clearly Erdoğan's standpoint. Therefore after the new electoral law had been introduced it was stressed that, along with introducing general presidential elections, it will be expedient to make full use of the existing prerogatives of the head of state (e.g. leading the sessions of the Council of Ministers) and, secondly, increase the president's competencies so that his position in the political system is compatible with the method of election and increased legitimacy. The second question is enabled by constitutional changes which mean the introduction of a presidential system in Turkey. The debate over this issue intensified in 2014/2015 due to parliamentary elections in June 2015. Their results were significant from the perspective of introducing constitutional changes (Erdoğan spoke of the need for

16 G. Aktan, Perhaps a presidential system..., "Turkish Daily News" of 24th June 2006 r., www.turkishdailynews.com.tr/article.php?enewsid=47055 (accessed on: 14.05.2007)

17 See more in: Presidential system debates resurfaces, "Turkish Daily News" 11 March 2005, <http://www.turkish-dailynews.com.tr/article.php?enewsid=7973> (accessed on: 15.05.2007 r.); Y. Kanlı, Turkey needs administrative reform, "Turkish Daily News" of 20 October 2006, <http://www.turkishdailynews.com.tr/article.php?enewsid=57199> (accessed on: 15.05.2007); G. Aktan, Why a presidential system?, "Turkish Daily News" on 16 May 2006, <http://www.turkishdailynews.com.tr/article.php?enewsid=43482> (accessed on: 15.05.2007 r.).

a “new constitution”) opening the doors for the introduction of a presidential system in Turkey¹⁸.

Although in theory the arguments cited above are still valid, the analysis of what Erdoğan and other AKP politicians say allow for an assertion that the conviction of the necessity for the state to function effectively, as enabled through a strong presidential administration, started to dominate the presidential system debate over the arguments on making progress in the democratisation of Turkey.

Moreover, the introduction of the new government system is indicated not only as a means for solving problems created by the parliamentary system, but also by mechanisms inherent in a democratic system. In this context it is imperative to link Erdoğan’s stance on the issue of introducing a presidential system with his negative attitude towards some measures inherent in a democracy. The Turkish President criticizes first and foremost the principle of the division of powers, which was supposed to be strengthened by direct presidential elections, as opposed to the president being elected within the Parliament. According to Erdoğan, this principle makes it impossible for state structures to function effectively and efficiently. First and foremost, this limits the executive authority by implication in a lengthy decision making process with the involvement of multiple bodies (the Turkish President complains that he cannot himself decide who to cooperate with), excessive bureaucracy and legislative and control procedures (including those in which the courts play a key role)¹⁹. Hence the necessity to strengthen the competences of the executive at the expense of legislative and the judiciary authority.

The critics of the drive to introduce a presidential system maintain that this can lead to authoritarian or dictatorial rule by the President (a “sultanate”) through decrees automatically voted through by a weak parliament²⁰. Regardless of whether such a scenario comes to pass, the introduction of a presidential system “à la AKP”, or perhaps better “à la Erdoğan”, may mean in practice significant weakening of the principle of the division of powers and the system of checks and balances with regards to executive authority²¹. This has been reflected in the actions of the AKP government since 2010, more on which below.

18 S. İdiz, Erdoğan aims to create stronger presidential system, “Al-Monitor” (Turkey Pulse), 3 February 2015, www.al-monitor.com/pulse/originals/2015/02/turkey-erdogan-presidential-system-campaign.html# (accessed on: 10.02.2015).

19 H. Hayatsever, Separation of powers an obstacle, says Erdoğan, “Hurriyet Daily News” 18 December 2012, www.hurriyetdailynews.com/separation-of-powers-an-obstacle-says-erdogan.aspx?pageID=238&nid=37052 (accessed on: 28.12.2012).

20 Cumhurbaşkanı Erdoğan’dan başkanlık sistemi açıklaması, “Radikal” 29 January 2015, www.radikal.com.tr/politika/cumhurbaskani_erdogandan_baskanlik_sistemi_aciklamasi-1282893 (accessed on: 10.02.2015).

21 M. Yetkin, Turkey’s future: Strong president or balanced democracy?, “Hurriyet Daily News” 7 July 2014, www.hurriyetdailynews.com/turkeys-future-strong-president-or-balanced-democracy.aspx?pageID=449&nid=68746&NewsCatID=409 (accessed on: 18.08.2014).

In accordance with statements made by Erdoğan and some of the other AKP politicians, the comprehensive introduction of a presidential system (the first step to which was changing the electoral law) does not necessarily mean a strengthening of the democratic system. Paradoxically, the more the democratic legitimacy of the head of state, the more the door is open for the Turkish political system to become increasingly authoritarian in character.

5. Systemic problems in the process of democratization

The above scenario is plausible due to the systemic conditions that exist in Turkey, that pose some of the fundamental issues in the process of democratisation.

In that country there are insufficient factors which could balance the strengthened position of the president. Firstly, strong executive power is not balanced by regional or local authorities. Turkey has a centralised state structure linked to a traditional strong state model²². This does not permit properly devolved local authorities. There are local authorities elected through local or regional elections on different levels but these are under the control of central administration. Moreover, prefects and governors nominated by the central government function alongside elected authorities on the district and county level. Only at the municipal level and in rural areas administrative bodies function independently as local authorities. Higher administrative units perform statutory duties independently only in certain domains²³.

Secondly, the traditional model of a strong state and its elites is linked to authoritarian tendencies reflected in Turkish political practice. These are a longstanding problem in Turkish political culture (this is therefore not characteristic of the AKP government)²⁴. These tendencies lead towards the strengthening of the executive power at the expense of the legislative power and the judiciary and towards a certain model of a strong political leadership. In both cases the division of powers and the system of checks and balances are weakened.

The AKP is clearly aiming to consolidate power in its hands. It has taken over all the important state institutions. At the same time the actions of the government through its legislative initiatives that are later passed by the Parliament as

22 More in: A. Szymański, *Model państwa w Republice Turcji*, (in:) A. Lisowska, A. W. Jabłoński (eds.), *Państwo w procesach przemian. Teoria i praktyka*, Toruń 2009, pp. 188-198.

23 A. Szymański, *System konstytucyjny Turcji*, *op. cit.*, pp. 90-94; A. Güney, A.A. Çelenk, *Europeanization and the dilemma of decentralization: centre-local relations in Turkey*, "Journal of Balkan and Near Eastern Studies" 2010, No. 3, pp. 241-257.

24 L. M. McLaren, *Constructing Democracy in Southern Europe. A comparative analysis of Italy, Spain and Turkey*, London, New York 2008, p. 260.

amendments to legal provisions and which are then approved by the President²⁵, lead in the direction of strengthening the police and the executive authority at the expense of the judiciary. Such is the case with the Minister of Justice. This occurs specifically with nominations to the highest judiciary offices in the country (e.g. the Supreme Council of Judges and Prosecutors) in order to control the actions of judiciary bodies and exclude or limit the remit of the courts and the prosecution. The second aspect anticipates, for example, changes to the Internet Act, which would increase the powers of the Information and Communication Technologies Authority or amendments to the regulation on the National Security Agency, which limit the agents' responsibility before the courts²⁶. These type of actions by the Turkish Government began with constitutional changes in 2010 (which in many aspects had a democratic character) and continued in the following years in reform packages concerning the judiciary powers²⁷. It is clear, therefore, that the critical approach to the division of powers voiced by Erdoğan influences the AKP government actions.

This specific state model is accompanied by strong leadership. The AKP governments, as with the centre-right governments of the 1980s and at the start of the 1990s, are characterised by a specific decision making process. Both the Prime Minister and later President Turgut Özal and Erdoğan are strong, charismatic leaders who make decisions independently or after consulting with a small circle of advisors, ministers or party members²⁸. These narrow circles of state elites participating in the decision making process in both cases got smaller and smaller with the passage of time.

Thirdly, the principle of the rule of law in Turkey left a lot to be desired. As mentioned above, an important factor in balancing the strengthening of the position of the executive authority as the result of the introduction of general elections is the work of the courts, including their function of control. The AKP government is aiming for limiting the remit of judiciary bodies, including first and foremost the Constitutional Tribunal, which once again exposes the dislike of the party politicians for the principle of the division of powers and the checks and balances. This is not just, as mentioned before, about increasing the remit of the executive authority in terms of nominations for the judiciary offices or even actions aimed at reducing the authority of these bodies in relation to certain institutions. There is a noticeable tendency to

25 Exceptions existed during the Gül presidency. Moreover, the passing of certain legal acts was on condition of the document being amended.

26 Turkish Parliament approves controversial intel bill, "Hurriyet Daily News", 17 April 2014, <http://www.hurriyetdailynews.com/turkish-parliament-approves-controversial-intel-bill.aspx?pageID=238&newsID=65214&NewsCategoryID=338> (accessed on: 17.04.2014).

27 S. Yazıcı, Turkey's Constitutional Amendments: Between the status quo and Limited Democratic Reforms, "Insight Turkey" 2010, No. 2, pp. 1-10.

28 M. Heper, Islam, Conservatism and Democracy in Turkey: Comparing Turgut Özal and Recep Tayyip Erdoğan, "Insight Turkey" 2013, No. 2, p. 145.

disregard court decisions and sentences and undermine the credibility of the judiciary bodies by AKP politicians. In the first case this is evident, for example, through the continuation of large public infrastructure projects in spite of the court decision to suspend the works. In the second case, the credibility of the main judiciary bodies is undermined. The best example of this is the work of the Constitutional Tribunal, whose decisions are negated when they are detrimental to the ruling party. In such cases, the AKP indicates the political, not substantive, motives for the actions of this institution²⁹. This is a risky phenomenon because it aims to take Turkey back to the period from before 1961 (when the Constitutional Tribunal was introduced to the new fundamental act) and therefore depriving the political system of independent control over the compatibility of legal acts with the Constitution.

6. Conclusions

At the start of this article the author posed a question whether the adoption of the new electoral law, and in particular the introduction of the common and general elections of the president, will facilitate democratization of the Turkish state. The analysis confirm the hypothesis that the current legislation, despite strengthening the democratic legitimacy of the head of state and removing some of the earlier deficiencies in the context of democratisation, may form a critical juncture, in which this may lead to an increase in authoritarian tendencies in Turkey's political system. This situation is due to the circumstances in which the new system for electing the head of state was adopted and the association made by politicians linked to the Justice and Development Party between general elections for the President and the necessity of introducing a presidential system "à la AKP". These issues indicate that the intention of this party is to further political interests rather than to aim for greater democratisation of the country. As the result, paradoxically, the more democratic system of presidential elections may open the doors to a less democratic political system. The introduction of a presidential system in Turkey (as a further result of strengthening the position of the President thanks to general elections) will mean in practice the executive power becoming too strong, without being sufficiently balanced by other political institutions, within the framework of the legislative authority and the judiciary. A centralised model of a strong state, the attempts by Turkish politicians to excessively strengthen the executive authority, (which are a traditional element of the political dilemma in Turkish political culture), and the issues with respecting the rule of law, do not allow for sufficient checks and balances for a centralised executive authority, such as those in the USA, that is, relatively strong [devolved] regional and

29 Erdoğan: Anayasa Mahkemesi kararına saygı duymuyorum, "Radikal" of the 4th April 2014, www.radikal.com.tr/politika/erdogan_halkimiz_bize_guven_oyu_vermistir-1184843 (accessed on: 15.04.2014).

local authorities and the principle of the division of powers and the control of the courts.

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