



Election of the President of the Republic of Turkey

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Abstract

Republic of Turkey Constitution, Article 102 of the governing presidential elections, the Constitutional Court by the elections of deputies at a rate of at least two-thirds needed to join is in the form of comments. This interpretation is in line to cancel the elections and was president of the election crisis. Following this interpretation of the Constitutional Court, replaces the Constitution, the President elected by the people and the future is envisaged to create a system to other problems are. This work is transferred only to the Constitution and the regulations to indicate problems that may arise. Especially in the field of public support with a strong president of the Council of Ministers and the Parliament would be likely to come out fighting.

Keywords: President; Parliamentary system; Constitutional Court; Presidential election

Türkiye Cumhuriyeti Cumhurbaşkanlığı Seçimi

Özet

Türkiye Cumhuriyeti Anayasasını Cumhurbaşkanlığı seçimini düzenleyen 102 maddesi, Anayasa Mahkemesi tarafından, seçime en az üçte iki oranında milletvekilinin katılımı gerektiği şeklinde yorumlanmıştır. Bu yorum doğrultusunda yapılan seçim iptal edilmiş ve cumhurbaşkanı seçimi krizi çıkmıştır. Anayasa Mahkemesi'nin bu yorumu sonrasında, Anayasa değiştirilerek, Cumhurbaşkanının halk tarafından seçilmesi öngörülmüş ve ileride daha değişik sorunları yaratacak bir sisteme geçilmiştir. Bu çalışma sadece Anayasadaki düzenlemeyi aktarmakta ve doğabilecek sorunlara işaret etmektedir. Özellikle halk desteğini alan güçlü cumhurbaşkanı ile Bakanlar Kurulu ve TBMM arasında çatışma çıkması muhtemel olacaktır.

Anahtar kelimeler: Cumhurbaşkanı; Parlamenter Sistem; Anayasa Mahkemesi; Cumhurbaşkanlığı Seçimi

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Article 102 of the Turkish Constitution of 1982, related with the election of the President of the Republic, stipulates that “The President of the Republic shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly and by secret ballot”. This provision was interpreted by the Constitutional Court as quorum for the meeting of the Parliament.ⁱ

This decision of the Constitutional Court turned into a problem again the presidential election, which had already been facilitated by the Constitution of 1982; and offered a more complex solution to this problem. The solution found is that the President is elected by the public.

The Constitution, as amended by Law no. 5678, arranges the election of the President as follows:

“The President of the Republic shall be elected by the public from among the Turkish Grand National Assembly members who are over 40 years of age and have completed higher education or from among ordinary Turkish citizens who fulfill these requirements and are eligible to be deputies.

The president's term of office shall be five years. The President of the Republic can be elected to two terms at most.

Nomination of a candidate for the Presidency of the Republic from among the members of the Turkish Grand National Assembly or from outside of the Assembly shall require a written proposal by 20 members of the Assembly. Furthermore, political parties with more than ten percent of the eligible votes in sum in the latest parliamentary elections can nominate a joint candidate.

The president-elect has to sever his relations, if any, with his political party, and his status as a member of the Turkish Grand National Assembly shall cease.” (Article 101)

“The election of the President of the Republic shall be concluded within sixty days before the term of office of the incumbent President of the Republic expires; or within sixty days after the Presidency falls vacant for any reasons.

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 two candidates who receive the greatest number of votes

in first ballot can run for the second ballot, and the candidate who receives majority of valid votes shall be elected President of the Republic.

If one of the candidates who gains the right to appear on the second ballot dies or loses his or her eligibility, the second ballot shall be conducted by substituting within the vacant candidacy in conformity with the ranking in the first ballot. If only one candidate remains for the second ballot, this ballot shall be conducted as a referendum. If the candidate receives most of the votes, he or she shall be elected President of the Republic.

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

The procedures and principles concerning Presidential elections shall be regulated by law.” (Article 102)

This amendment on the Constitution also brought about some interesting (or strange) developments concerning the presidential election: A referendum was held for the constitutional amendment; the parliamentary election was rescheduled for an earlier time; and the 11th President was elected in accordance with existing provisions of the Constitution. However, another problem occurred when the provisional Article 19 added to the Constitution by the Law voted by a referendum was intended to apply to the election of the 11th President.

This problem was solved by amending the text on which the referendum was to be held; however, the voting had already started at Turkish border gates. The text to be voted by a referendum was altered by another constitutional amendment (on October 16, 2007) carried out before the day of voting (on October 22, 2007). The removal of the provisional Article 19 related with the election of the 11th President rendered the amendment controversial and the problem more complex. For, the Constitutional Court was the point of recourse for determining the absence of the amendment already accepted by the referendum.

Furthermore, it was also discussed whether the term of office of the 11th President elected by the Turkish Grand National Assembly would be seven years or five years.

The abovementioned problems are a result of the strained interpretation of the constitutional provision concerning the election of the President and the attitude of the majority of the Parliament which did not choose to revise Article 12, an easier way to solve the problem, in the face of this interpretation. Due to current attempts to make a new

Constitution, the election of the President is not covered by the relevant part in this book, but included as an Annex here.

It is clear that the amendment brought in a short period and as a sort of reaction does not comply with the parliamentary system. With the existing authorities vested by the Constitution, the President, holding the majority, can have power conflicts with the Board of Ministers and the Parliament. Moreover, with the inevitable involvement of political parties in the process, the impartiality of the President will be questionable.

ⁱ* The related parts of the Decision no. 2007/45 published in Official Gazette of June 27, 2007 are as follows:

"Paragraph 1 in Article 102 of the Constitution stipulates that the President of the Republic shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly and by secret ballot. If the Turkish Grand National Assembly is not in session, it shall be summoned immediately to meet.

In order to decide whether the parliamentary decision, which is the matter in dispute, has the capacity of a bylaw, it is required to clarify whether the expression "two-thirds" in Article 102 covers quorum for the meeting of the National Assembly.

For the election of the President, Article 96 constitutes the general provision and Article 102 constitutes the special provision. Thus, it is obligatory to evaluate together Article 102 of the Constitution which regulates the election of the President and Article 96 of the Constitution which regulates the quorum for meeting and decision making of the National Assembly.

Article 96 of the Constitution, stipulating that "Unless otherwise stipulated in the Constitution, the Turkish Grand National Assembly shall convene with at least, one-third of the total number of members and shall take decisions by an absolute majority of those present; however, the quorum for decisions can, under no circumstances, be less than a quarter plus one of the total number of members", makes a distinction between quorum for meeting and quorum for decisions of the National Assembly and sets the lower limit for both. Accordingly, the Turkish Grand National Assembly, "unless otherwise stipulated in the Constitution", can convene with at least one-third of the total number of members and can take decisions with a quarter plus one of the total number of members. Given the current total number of members, the Turkish Grand National Assembly can principally convene with 184 members and take a decision with at least 139 members. Nonetheless, provided that there is another constitutional provision concerning the quorum for meeting and quorum for decision, that specific provision shall be applicable.

This regulation has some differences compared to the Constitution of 1961. Article 86 of the Constitution of 1961 lays down that "an absolute majority of its plenary session shall constitute a meeting quorum for each legislative body, and unless otherwise provided in the Constitution, an absolute majority of the attending members shall constitute a quorum of decision." In this provision, the existence of "other provisions in the Constitution" only affects the quorum for decision and there is no exception to the general rule concerning the quorum for meeting. On the other hand, in Article 96 of the Constitution of 1982, the expression "unless otherwise stipulated in the Constitution" is shifted to the beginning of the text and it is noted that "other" exceptional provisions can exist in the Constitution in terms of not only quorum for decision but also quorum for meeting. In this case, compared to the Article 86 in the Constitution of 1961, the Constitution of 1982 consciously lays down exceptions to the general rule in Article 96 for quorum for meeting.

In this respect, it is observed that, in the Constitution of 1982, Article 87 on the proclamation of amnesties and pardons, Article 94 on the election of the Speaker of the National Assembly, Article 100 on bringing ministers before the Supreme Court through parliamentary investigation, Articles 99, 111 on the election of the President and Article 175 on constitutional amendments involve special provisions which constitute exceptions, concerning the quorum for meeting and decision of the Turkish Grand National Assembly, to the general rule in Article 96. In these cases, certainly, the special provisions in the abovementioned articles will apply to the quorum for meeting and decision of the National Assembly, not the general rule as stipulated by Article 96.

Analyzed in terms of expression styles and functions, the qualified majority mentioned in the given articles which constitute an exception to the general rule does not comply with the quorum for decision set by Article 102 concerning the election of the President.

Article 102 about the election of the President is different from other and reads as follows:

"The President of the Republic shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly and by secret ballot. If the Turkish Grand National Assembly is not in session, it shall be summoned immediately to meet.

The election of the President of the Republic shall begin thirty days before the term of office of the incumbent President of the Republic expires or ten days after the Presidency falls vacant, and shall be completed within thirty days of the beginning of the election. Candidates shall be declared to the Bureau of the Assembly within the first ten days of this period and elections shall be completed within the remaining twenty days.

If a two-thirds majority of the total number of members cannot be obtained in the first two ballots, between which there shall be at least a three-day interval, a third ballot shall be held and the candidate who receives the absolute majority of votes of the total number of members shall be elected President of the Republic. If an absolute majority of votes of the total number of members is not obtained in the third ballot, a fourth ballot will be held between the two candidates who receive the greatest number of votes in the third ballot; if the President of the Republic cannot be elected by an absolute majority of the total number of members in this ballot, new general elections for the Turkish Grand National Assembly shall be held immediately."

Unlike the other constitutional provisions setting a qualified majority, paragraph 1 and paragraph 3 of this Article sets forth two different quorums. To elect the President, among the four ballots in three paragraphs, for the first two ballots a two-thirds majority of the total number of members is required, and for the third and fourth ballots absolute majority of votes of the total number of members is required. Thus, the quorum for decision required for the election is set separately for each ballot. Accordingly, it should be accepted that the quorum laid down in the rule stipulating that "the President of the Republic shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly" has a different meaning from paragraph 3. The rule of two-thirds set by the rule that "the President of the Republic shall be elected by a two-thirds majority of the total number and by secret ballot" holds a different objective and function from the quorums for decision in paragraph 3. While it is stipulated that the President shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly and by secret ballot, paragraph 4 of Article 94 specifies that the Speaker of the Parliament shall be elected by the given quorum for decision after emphasizing that the Speaker shall be elected by secret ballot. This difference demonstrates that the rule that "the President of the Republic shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly" in paragraph 1 of article 102 is put deliberately to set the quorum for meeting. In this respect, the fact that separate quorums for decision are set for each of the four ballots and that paragraph 1 and paragraph 3 are separated from each other adding paragraph 2 between 1 and 3 which lays down a thirty-day election schedule show that Article 102 should be interpreted in line with the abovementioned meaning and content.

There is no hesitation that the objective of the rule should be taken into consideration besides its literal meaning to interpret it and obtain a reliable result. It is evident that Article 102 aims a qualified compromise as far as possible in the National Assembly for the election of the President. The following show that compromise is the basis of presidential election in the National Assembly: limiting the period of applications for candidacy with 10 days in a thirty-day period of election in paragraph 2, setting the rule of a two-thirds majority of the total number of members for the first two ballots of four to be carried out during the remaining twenty days to elect one of the candidates, holding a fourth ballot between the two candidates who receive the greatest number of votes in the third ballot, and holding new general elections for the Turkish Grand National Assembly provided that the President of the Republic cannot be elected by an absolute majority of the total number of members in the fourth ballot between the two candidates.

Article 104 of the Constitution stipulates that "the President of the Republic is the Head of the state. In this capacity he or she shall represent the Republic of Turkey and the unity of the Turkish Nation". Furthermore, given the nature of duties and authorities granted to the President and other constitutional provisions concerning the status of the President, it is clear that the Constitution adopts the approach of electing the President upon participation and will of the representatives who speak for the majority of the nation. These regulations constitute the positive legal grounds for the compromise on the election of the President.

It is possible to come to a compromise in the first two ballots for the election of the President on condition that the rule in paragraph 1 of Article 102 stipulating that "the President of the Republic shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly" covers quorum for meeting. Otherwise, the first and second ballots set in paragraph 3 will be meaningless, and there will be no need for compromise as the President can be elected by absolute majority of the total number of members in third and fourth ballots. Due to the possibility of electing one of the candidates by an absolute majority of the total number of members in third and fourth ballots mentioned in paragraph 3, the political party or parties holding the majority in the National Assembly may not consent to elect the President by two-thirds majority in first and second ballots. This situation does not comply with the compliance principle of the Constitution for the election of the President"