

İRAN İSLAM CUMHURİYETİ'NDE YÜRÜTMENİN BİR UNSURU OLARAK CUMHURBAŞKANLIĞI

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ÖZ

Bir ülkenin iç ve dış siyasetini iyi anlaşılması ve kavranması için o ülkenin anayasal kurumlarının birbiri arasındaki ilişki ve hukuki konumlarının iyi bilinmesi gerekmektedir. Klasik parlamenter sistemlerde Devlet Başkanlığı (Anayasal Monarşiler hariç) Cumhurbaşkanlığı makamı tarafından temsil edilmektedir. İran İslam Cumhuriyeti anayasal sisteminde ise bu durum farklı bir durumdadır. İran'da devlet başkanlığı ve en üst makam olarak *Velâyet-i Fakih* makamı bulunmaktadır. Cumhurbaşkanı ise devlet protokolünde ikinci konumda bulunmaktadır. Anayasal düzen içerisinde İran Silahlı Kuvvetleri Komutanını ve Kuvvet Komutanlarını, İran Yüksek Yargı Başkanı gibi birçok hayati makamın başkanı Cumhurbaşkanı tarafından değil *Velâyet-i Fakih* makamında bulunan Rehber tarafından atanmaktadır. Rehber, İran İslam Cumhuriyetinin siyasi ve dini lideri olmakla beraber hukuki ve siyaset bilimi açısından devlet başkanı konumundadır. İran anayasal sisteminde cumhurbaşkanının yetki ve konumunun iyi bilinmemesi İran siyasetini özellikle seçim dönemlerinde yanlış değerlendirilmesine sebep olmaktadır. Bu zeminde çalışmamızda İran İslam Cumhuriyetinde Cumhurbaşkanlığının konum ve yetkilerinin birincil kaynaklar üzerinden ortaya koymaya çalışacağız.

Anahtar Kelimeler: İran İslam Cumhuriyeti, Humeyni, Rehber

JEL Kodu: K 40

PRESİDENCY AS AN ACTOR OF EXECUTIVE IN THE ISLAMIC REPUBLIC

OF IRAN

ABSTRACT

For a better understanding of a country's domestic and foreign policy, the relationship among the country's constitutional and official ranks, constitutional structure must be well known. In the conventional parliamentary systems, the State (except for Constitutional monarchies) is represented by the office of the president. In the constitutional system of the Islamic Republic of Iran, it is unorthodox. As the highest political authority in Iran, head of state is Supreme Leader. The President of Iran has the secondary rank in the state protocol. In the constitutional order Commander of the Armed Forces and the highest military ranks, as well as many vital ranks such as the head of the High Judiciary appointed by the office of velayat-i faqih which represented by Supreme Leader, not by the president. Supreme Leader, in terms of legal and political science, is the head of state. Ignorance of duties and responsibilities of President of Iran leads to misinterpretation of Iranian politics especially during election periods. On this basis in our study we try to explain the position and powers of the presidency in the Islamic Republic of Iran, based on the primary sources.

Keywords: Islamic Republic of Iran, Khomeini, Supreme Leader

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INTRODUCTION

Although the constitutional structure of the Islamic Republic of Iran based on the Shia Jafari Islamic Thought, in the real manner it was founded on the concept of Khomeini's Velayat-e Faqih(rule of the jurist) understanding. In the first section of the constitution of Iran, political system is defined as an Islamic Republic. But in terms of

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understanding the sovereignty and legitimacy of the constitutional structure, Islamic Republic of Iran is a *sui generis* political entity. The concept of sovereignty and legitimacy of Velayat-e Faqih is another vital issue which is excluding our study. Framework of our study is on constitutional powers of the President. Due to the constitution Head of the Islamic Republic of Iran is velayat-e faqih. Actual respond to the question of “who rules Iran” is simply “Supreme Leader”*. In the political system of Iran, as most of the political systems, There are formal and informal power centers which dominates the society. Supreme Leader is the prime source of authority that determines the basic guidelines of domestic and foreign policy. The presidency in its presenting form is the result of constitutional amendment implemented in 1989. We try to analyze the formal political structures. So we examine the legal documents such as constitution, law and regulations. Presidency of the Islamic Republic of Iran, following Supreme Leader, secondary highest authority in the constitutional hierarchy. In this study, the duties, authority of the president and his relationship with other institutions will be revealed from the primary sources.

1. AN OVERVIEW TO THE CONSTITUTIONAL STRUCTURE OF THE ISLAMIC REPUBLIC OF IRAN

1.1.THE EXECUTIVE FORCE IN ISLAMIC REPUBLIC OF IRAN

1.1.1.Velayat-e Faqih

Iranian orthodox constitutional lawyers compares the president with the presidential systems while mentioning Iran, due to its directly election by the people (Haşimi, C. II, 265-266:). If the supreme political authority in Iran was the president, this analogy would be an accurate comparison. But the supreme political authority in Iran, is Supreme Leader not the president. Supreme Leader (velayat-e faqih) has superior powers over legislation, executive force and judiciary(Taflioğlu, 2010: 48). There is a duality of power between Supreme Leader and president. The formal political structure consists of the major institutions such as: the Assembly of Experts, the Supreme Leader, the president, the Expediency Council, Shuray-ı Islami* (the parliament), the Council of Guardians, the judiciary, state radio and television, the armed forces, the Iranian Revolutionary Guard Corps.

Supreme Leader has right to determine the general policy of the Islamic Republic, (Art. 110 Column 1), supervision of carrying out the regime in a good manner (Column 2), holding a referendum (Column 3), assigning the High Command of Armed Forces (Column 4), declare War and Peace (Column 5), the appointment and dismissal of members of Council of Experts, the President of the High Judiciary, President of the Islamic Republic of Iran, Head of Television and Radio Council, the chief of the General Staff, the Commander of the Islamic Revolutionary Guards Corps (Column 6), to solve conflicts between Legislation, the Executive force and the Judiciary (Column 7), approval of the election of the President (Column 9). Some Iranian jurists mentioned that impeachment issue not on its own initiative (*sua sponte*). The President offers his resignation to the Supreme Leader (Art. 130), but he must proceed his office until it is accepted by the Supreme Leader.

* Jurisprudence

* Majlis

The preamble of the Constitution of Iran refers to importance of Khomeini's political and religious leadership and the people in the establishment of the Islamic Republic. Subsequently refers due to the Islamic government that people have right to determine their own destiny and participation to the decision-making process in the social and political issues.

Velayat-e Faqih is the core and heart of the regime. It is cited in the preamble as an safeguard of the Islamic objectives and protector of the regime from deviation. It is necessary to emphasize the office of *Velayat-e Faqih* highest rank and the competent authority in the constitutional structure of Islamic Republic of Iran. In this context, in the Islamic Republic of Iran the separation of powers, particularly between Supreme Leader and the president, is a unique type. The Legislature, the Executive and the Judiciary has been working under the supervision of the Supreme Leader (Article 57 of the Iranian Constitution). The same article also emphasized that these three powers works independently from each other. In the understanding of the sovereignty political system of Iran, Supreme Leader is the sole source of sovereignty.

2. ELECTION OF THE PRESIDENT OF THE REPUBLIC OF IRAN

The Constitution stresses that Islam is the official religion and the official sect is Shia. (Article 12 and Article 14). Nomination for the Presidency of the Republic should be submitted on a voluntary basis to the Ministry of Internal Affairs. Nomination must be officially declared by the Council of Guardians (Shuray-i Negahban) for the validity of the nomination (Article 110, paragraph 9). Any candidate should nominate for the presidency must be from Shia, Twelver Imam Shiism and must be a man (Iranian constitution, Article 115). He should take absolute majority of eligible votes to be elected. Soon after the approval of Supreme Leader, He make an oath which stated in Article 121 of Iranian constitution, in the presence of members of the Assembly (Shuray-i Islami) and the Expediency Council. It is also state that the president is directly elected with the choice of the people which is the most important indicator of national sovereignty (Article 114 of the Iranian Constitution). The other important point is that the approval of the Supreme Leader for the appointment of the President formally (Iranian constitution, Article 110 paragraph 9). In Islamic Republic of Iran nobody does have any privileges (Iranian constitution, Article 19 20). For this reason, before the law any immunity to the president is provided. In this context, if president accused of any crime, after speaker of the parliament being notified by the court, the investigation is carried out by the criminal courts. (Article 140 of the Constitution).

After the revolution, as constitution first adopted, duty to solve conflicts between legislative, executive and judicial powers was given to the president. However, the constitutional amendment in the tenth year of the revolution, and the solution of conflicts and coordination between the three powers are given to the Supreme Leader. In the first decade of the post-revolutionary period Prime Minister's Office was present. However, there was emerging conflicts between president and prime minister in terms of the powers and duties. In this regard, the Prime Minister's office has been removed by the constitutional amendment (Areste, 1383: 712).

2.1. DUTIES AND RESPONSIBILITIES OF THE PRESIDENT

President is elected for consecutive four years terms by the people and is responsible before Islamic Consultative Assembly (Majlis) (Article 122) and before the nation (Iranian constitution, Article 114). Ministers can face dismissal by interpellate

submitted by the Islamic Consultative Assembly. The president is accountable to the people, Supreme Leader and Islamic Consultative Assembly (Article 122). Supreme Leader has right of dismissal over President of the Republic if he has failed to fulfill the duty (Article 89, Paragraph 2). Although constitution indicates powers of Supreme Leader in article 110 but the modus of dismiss is stated in article 89. President also responsible for the acts of council of ministers to the Islamic Consultative Assembly (Article 132 of Iran's constitution). As we pointed out previously the duty of carrying out of constitution of Islamic Republic, dedicated to the Supreme Leader (Article 113). For the implementation of the laws and resolutions which are taken by Islamic Consultative Assembly, as in parliamentary systems, must be approved and published by the president (Iranian constitution, Article 123). Nevertheless president only could sign international treaties and agreements subsequent to ratification of the Islamic Consultative Assembly (Iran's constitution Article 125). He is responsible for the preparation and management of the budget (Article 126), to accredit representatives of the Islamic Republic to foreign states, and to receive the representatives of foreign states appointed to Iran (Article 128). Ministers are submitted to the Islamic Consultative Assembly to take a vote of confidence (Article 133). The president is also responsible from acts and verbs of Council of Ministers to the Parliament (Article 134 Annex). In the meantime, if any ministries vacant he could temporarily designate a minister for a period of 3 months (Article 135). In case of half the ministers were altered, president must take a vote of confidence in Islamic Consultative Assembly (Article 136). After presenting the resignation of the President to the Supreme Leader and if not approved by him, President must stay in office (Article 130).

Supreme National Security Council* chaired by President of the Republic (Article 176). President's personal and family owned all goods and money must be notified to the Higher Court (Article 142). Due to the article 124 of the Constitution, President assigns his vice-president. He could unseat his subsidiaries as he assigns. The uppermost vice-president by virtue of he represents president, he is also liable to Supreme Leader. The other subsidiaries organize the gathering of council of ministers and makes necessary arrangements. Apart from other duties first vice-president has an important task in the event of the death, resignation or dismissal of the president, and in the case of president's unable to perform the office more than 2 months with the approval of the Supreme Leader (maximum 50 days) until the appointment of a new president take place, he represents the office (Article 131). Vice-presidents can participate in Islamic Consultative Assembly's public discussions (Article 70).

Duties and responsibilities of President beyond constitution, stated in separate law concerning president. In the second septum of the law of 13 and 16, enforcement and the protection of the constitution is considered among the duties of the president (Mecmuay-ı Kavanin-i Saal-i 1365: 367). Accordance with article 15 of this law, noted that the right to warn where president considers any action against constitution. However, the authority to interpret the constitution belongs to Guardian Council (Shuray-ı Negehban) but there are different opinions among lawyers in the implementation of this article (Mehrpur, 1380: 60).

* Council which has political, intelligence, economic, social and cultural dimensions. Members are : the heads of legislation, executive and judiciary, the Chief of Joint Staffs of Armed Forces, representatives appointed by Supreme Leader, the ministers of foreign affairs, interior and intelligence. The decisions of this council are binding after approval of the Supreme Leader.

Enforcing of the constitution was the one of the most important debate in the first decade after the revolution(Article 113). In the tenth year of the revolution, after the death of Khomeini, the president's powers are diminished. In the draft constitution which prepared in the pre-revolutionary era, presidency deliberated highest political rank. In this regard, the President commisioned to ensure coordination among legislative, executive and judicial powers and to ensure the implementation of the constitution(Derşivend, 1391: 1). As per enacted the law after the revolution, when the president sees requisite for the implementation of the constitution, he could receive information from the institutions or make inquiry and warning(Derşivend, 1391: 2). In addition, the President, within one year, any of the attitudes and actions by the institutions, considered as unconstitutional, renders to the Islamic Consultative Assembly(Duties and Responsibilities of Presidency Act, Article 15). In the amendment which was held in the tenth year of the revolution, duty to solve coordination of legislative, executive and judiciary were given to the Supreme Leader. This amenmendt caused a shift in the paradigm of the presidency. Who has the duty to audit enforcement of the constitution. The president in office, based on the article 113, and 121 of the Constitution(as supervision of the implementation of the constitution) has established a committee monitoring implementation of the virtue of the constitution. By the virtue of article 124 of the Constitution has appointed vice-president who is "responsible for the enforcement of the constitution". Ante constitutional amendment there was assumption of authority between president and prime minister. Today president has authority to establish a government but Supreme Leader is ultimate supervisor over the political system. President is supervising the powers on behalf of the Supreme Leader. The person who is the chief of executive power at the same time supervising the other two powers. The same person is also responsible for the implementation of the constitution. Henceforth, some Iranian lawyers, argues that this article gives the president right to interfere in the affairs of other powers(Derşivend, 1391: 3). In fact, the president before taking office sworn statement "protect the Constitution" upon the oath.

There is a debate for supervision over constitution among Iranian lawyers. It is just supervising enforcement of the Constitution, whether he has right to intervene the political process(Isfahani, 1391: 1). Herein, council of expendency, sole institution has the authority to interpret the constitution, has vital role. It should be emphasized that interpretations and reviews after the tenth amendment, should be considered. Before amendment, the first president of the Islamic Republic Abul Hasan Benisadr noted to the Supreme Judiciary that legislation exceed its authority. Afterwards this written notice Chairman of the Supreme Judiciary requested from the Council of the Expedency clarification of the situation. Council of the Expedency by referring to article 113 of the Constitution declared* the President has right to monitor the implementation of the constitution (Isfahani, 1391: 2). In an another verdict council stated lack of technical facility president could form commision to perform this act(Isfahani, 1359: 3). This constitutional interpretation before amendment proved that president clearly has authoritiy to monitor over legislation, executive force and judiciary in(Mehpour, 1999: 88). The president guarantees the independence of the judiciary and Supreme Judicial Council supports him to fill this mission(Article 64). As in most of the parliamentary systems, the president is not held accountable for acts while he takes in fullfillment of his duties, except for treason(Article 68).

* Verdict of the Council of Expedency dated 12/5/1359.

2.2. ESTABLISHMENT O COUNCIL OF MINISTERS AND DUTIES

Ministers are proposed by the President to the Majlis in order to get vote of confidence from the Majlis. Majlis has right to question and impeach the members of government and if necessary revoke its vote of confidence. As it is mentioned previously president is the head of executive branch after the office of Supreme Leader. In 1989 when the constitution was amended, office of prime minister was abolished. President's power and authority over ministers enhanced. He could dismiss ministers after an inquiry proves a violation of the constitution(Article 136). The president must achieve a vote of confidence from the Majlis for his cabinet after its formation. Total number of the ministers are specified by law(Article 133). Minister is in charge of ministry and works in coordination with government program(Article 188 bylaw of Islamic Council Assembly).

There is a constitutional distraction in the appointment of the ministers. While Article 135 of the Constitution of the Islamic Republic gives the president the authority to decline or approve of ministerial resignations, Article 136 permits the supreme leader the right to dismiss ministers from power. In the Islamic Republic of Iran, in the Velayet-e-Faqih rule by theocracy, presents the supreme leader dominating over powers to intercede in all spiritual and temporal affairs on the premise that his role will be to guard the revolution and the nation (Ummah). Article 57 states; "The powers of government which rule in the Islamic Republic of Iran are the Executive, Legislative and Judicial powers, each of which enjoys autonomy from the others, but all of them together are subject to the supervision of the Guardian of the country and Imam of the nation (umamah), embodied in the person of the supreme leader, according to the subsequent articles in this constitution"(Shabani, 1381: 139). The authority which is formulated in the language of theocracy suggests that the orders of the supreme leader are indisputable religious decrees which cannot be violated.

CONCLUSION

Political system in Islamic Republic of Iran, depends on two basic pillars. These are divine and human. Presidency reflects the human pillar of the constitutional system of Iran. People has right to control over determining their social fate and this is undeniable. Supreme Leader is divine side of the political system who heads the pyramid of the political structure of Islamic Republic of Iran. He occupies the post of *Waliy-i Amr* (Apostle of the Ummah), stated officially *Welayat-e Faqih*. He is the genuine head of state and president is chief of executive force after Supreme Leader. Executive branch in Islamic Republic of Iran, has two column; Supreme Leader and president. President of Islamic Republic is responsible for implementing the constitution and control over the Executive force excluding issues which are directly related to the Supreme Leader. The president's task is to ensure that the constitution of Islamic Republic put into effect without being violated. In this regard Presidency has more duties and authorities than the head of other two powers.

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