

Presidential System and the Turkish Republic of Northern Cyprus (T.R.N.C)

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A) WHAT IS A PRESIDENTIAL SYSTEM?

In the existing governmental systems in the world, democracies are shaped according to the level of separation of the legislative, executive and judicial powers. In modern democracies, the judicial branch of the government, as a body, is always set up separately and away from the influence of the legislative and the executive bodies. Our main subject here will be the connection between legislative branch (the legislature or parliament) and executive branch (the government) and their relationships. The essence of this relationship and this link generally appears in written constitutions. The idea of the legislative, executive, and judicial powers being in separate hands dates back to Aristotle's times. This very theory of "Separation of Powers" that occupied the minds of many thinkers have found its modern manifestation in the writings of the famous French thinker Montesquieu. Montesquieu, in his work called "The Spirit of Laws" indirectly emphasized the need for the separation of powers and the use of these powers by separate bodies by saying: "If the power of legislation and the power of execution are given to the same people or same officers, there remains no sense of liberty" and ".....again if the legislative and judicial powers are not separated one cannot talk about liberty." As it can be noticed, the essence of the concept of separation of powers lies the need for creating a "government based on legal principles" and the concern for "securing the liberties." Briefly, the theory of the separation of powers is nothing but an effort to create a "limited competence." One of the most important dimensions of the separation of powers is the preoccupation that human beings might potentially be evil, and that the person in power might use his powers for his evil deeds and that might continue to do so unless he otherwise faces serious consequences. In order to prevent such misuse, the power of that authority shall be restricted or limited. The oldest living constitution in the world is the US constitution. During the creation process of the US constitution, many famous lawyers and scientists openly emphasized the following points: "to take such precautions in order to prevent the misuse of the political power... Isn't that the biggest insecurity felt towards the human nature? If people were like angels there would be no need for a state. If people were ruled by angels, then there would be no need for internal or external controls." The idea of modern constitutionalism and

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the separation of powers is completely based on the mistrust felt towards the government. The separation of governmental powers is vital for democracy. The accumulation of the powers in one hand gives birth to a dictatorship. In the light of this way of thinking, the US constitution was exposed to a strict separation of powers. They called it the presidential system. It was with this constitution that the term “presidential system” entered into the related lexicon worldwide. After the US gained its independence from England, it entered into the phase of constitutionalization after 1787. The politicians and the scientists of that era were fascinated by the English governmental structure and after they devised the legislative and the judicial branches, they wanted to find a way to organize the executive body. In other words they began to search for someone to head the executive body. In the English system, which was the system they took as an example, the executive body was the king, so the Americans were in search of a person or authority to replace the king as the executive body. After many discussions, it was decided that the power of execution would be gathered in one single hand and they named such person the “President.” So, this was the way the presidential system was born in the US. Unlike the parliamentary system, the presidential system was not born nor developed by itself. It was actually created within the US constitution. The presidential system has been experimented in many countries without success. Today, it is only in the US that the presidential system works successfully. Despite the fact that other presidential experiments were soon ruined by *coup d’etats* and replaced by despotic “presidential” prototype regimes. So, whenever the presidential system is concerned, it is the US type of regime that must come to mind and things must be analyzed accordingly. So, what is the US type of presidential system anyway? And how come it works so perfectly? According to the US constitution, the power of legislation lies in the hands of the US Congress, which is constituted by the Senate and the House of Representatives. The power of execution lies in the hands of the US president. The judiciary is represented by a high court and many other practically-created lower courts. The Senate, which is one of the constituent bodies of the Congress, consists of 100 Senators, two from each state. Senators are elected for a six-year term. The House of Representatives consists of 435 representatives coming from each state in proportion to their respective populations, elected for two-year terms. The US President is elected for a four-year term. The election of the President takes place in two phases. First, each federal state chooses delegates, in an election with universal suffrage that will elect the president. In the second phase, these delegates choose the US president. The president, who is elected by the people through elections, is not accountable to the Congress. Except for a special set of actions, the Congress has no authority over the president and cannot normally ask for his resignation as is possible in a parliamentary system. The way his presidency comes to an end is through the completion of his term in office at the end of the four years. In other words, the President is only responsible to the voters until the end of the four-year period. In return, the president cannot abolish the Congress. Despite the fact that there is a strict separation between the legislative and the executive powers, there is an established system of “checks and balances” in

the American Constitution to prevent them from crossing the line while using their authorities. The President has the authority to veto bills (legislation) passed by Congress. And again, the President has the authority to select federal judges. The Congress, on the other hand, has authority over areas such as deciding the Presidential budget, setting up the ministries (departments) for the President, overriding the veto of the President with 2/3 approval, and approving international agreements signed by the President. To summarize, the US president is only the head of the executive body, not the head of all branches of the government. Also, in the check and balance system, the judicial system works completely independent and neutral to control the legislative and executive branches. After understanding how the presidential system works, here it is time to emphasize the specific features and the negative sides of this system:

- a) A parliamentary regime is a democratic and constitutional type of governance in which the executive body come from the legislative body (in other words the executive body is derived from the parliament) and that is responsible to it. In parliamentary systems, the head of the executive body (the prime minister) and cabinet (the ministers) are based on the confidence of the legislative body and, through a vote of lack of confidence; they can be removed from power. In presidential systems however, the executive (the president) is chosen by the people for a certain time period and he normally is removed from power only by new elections. This provides the continuous existence of the executive body. A similar kind of stability can be obtained in parliamentary systems by the majority rule of a single party.
- b) In parliamentary systems, the prime ministers are chosen by the parliament. However in a presidential system the president is directly chosen by the people.
- c) The presidential system, by its nature, weakens the political parties, which are essential to democracy. That's because the government is constructed not through the ideas of the political parties but according to the characteristics of a single person. This also weakens the democracy in parallel ways.
- d) In a presidential system the president personally represents the executive body and stays suspicious about any other political or bureaucratic structure and may prevent them from strengthening. That is to say, the very bodies and the institutions of the government could be weakened.
- e) Since the Parliament and the President are both brought to power by the people in elections, they both claim to represent the will of the people. In case that the parliament and the president (that is to say both the legislative and the executive bodies) have different and conflicting preferences, it is always probable that a continuous environment of crisis might exist. (the Allende period in Chile or the Goulart period in Brasil for instance...)
- f) The parliament in the parliamentary system continuously checks the government and follows its actions. There exists no such checks in the presidential systems, and the lack of this paves the way for an environment in which illegalities become severe.

g) The presidential system becomes epitomized in the character of the person representing it. A president with a bad image hurts democracy in the eyes of the people. (Boris Yeltsin, who was behind the bombings in the Russian Duma and who was used to make drunken public appearances is an example to this.)

h) In presidential systems, the president who won a proportion of votes with little more votes than his opponent absolutely holds the power for a time being. “The winner takes it all.” A person can hold the position of the executive body being supported by the 51 per cent of the population, but at the same time this person is not favored by the 49 per cent of the voters. In France (where there is a semi-presidential system) it is always that a person not being favored by the 45 per cent of the population is elected. And again G.W. Bush was elected by only 51 per cent of the votes.

i) In parliamentary systems the representatives are chosen by universal suffrage. It is possible for qualified politicians and statesmen to be elected to the legislative and executive bodies (the government) by the votes of their people. In presidential systems however the people who are close and loyal to the president have a chance to participate in the executive body because the only authority of the executive body is the president himself and he can appoint any person he wishes to any position.

j) In a parliamentary system, political challenging takes place between political parties or “institutionalized ideas.” In contrary, in presidential systems these challenges are between persons and their personal characteristics.

k) Whenever there are deadlocks between the executive and the legislative bodies in parliamentary systems, these deadlocks can be resolved through the preferences of the legislative body. The legislative body can replace an existing government by a vote of no confidence or by forcing resignation of the ministers. However in a presidential system, there is no such chance for resolving the deadlocks in this way. It cannot install another president (executive). It has to accept the fact that the executive body will be in power all through its term in office. Now, let’s come to the question of why the presidential system can only be experienced fully in the US in its real sense:

a) The USA has a (*sui generis*) system of governance that has no similar to it in any other country in the world. The tradition of democracy in the United States is very strong. The democratic way of thinking and the democratic culture is so embedded that it is accepted by the people with tolerance.

b) The two parties (the Democrats and the Republicans) that hold the political life of the country are so similar to each other. They also have no party discipline. A Democratic senator can support a Republican one on a certain subject even if their general views are completely in contradiction to each other. This is seen as very natural. The Democrat party, in such case does not punish its own member for supporting the Republican.

c) The federal system works quite successfully and this federal structure has the ability to check the power of the president.

d) The High Court has a great role to play in the American Democracy.

e) The Americans deeply respect their democracy. They show a huge opposition to any criticism towards their constitution.

It is not possible to understand the presidential system in the US without having a good understanding of the position of the President. Both regimes are democratic and modern regimes existing in today's world. However, I would like to state here that the parliamentary system is much more favored in the world today and it is much more widely used. While presidential systems can only be implemented in the US, the parliamentary or the semi-presidential systems can find wider areas of implementation worldwide. Parliamentary systems, as a system of governance, are overwhelmingly accepted and used in EU countries. Today, many political scientists in the US (Lloyd Cutler for instance) have analyzed the shortcomings of the American presidential system and have suggested majority parliamentary regimes instead. Presidential systems were tried in the Latin American countries and they resulted in failure. These countries could not follow the discipline of "separation of powers" which is the essence of presidential systems. The presidents that came into power through elections surrounded themselves with extraordinary powers (such as the power to abolish of the parliament) in search of gaining dominance *vis-à-vis* the legislative body. For these purposes, they headed towards becoming dictatorships and caused crises and conflicts to appear between them and the legislative bodies. Since there were no constitutional provisions that helped decide who would have the last word in such conditions of conflict and crisis, the army intervened. The army, while acting as a mediator had toppled the governments and gained control. In the US, to prevent his concept, the army is under the control of civil authority. This minimizes the possibility of a *coup d'etat* to minimum or zero. Today, in countries that have presidential systems, the democratic order cannot sustain the country and political crises are severe. In Mexico, the people are on street following every presidential election and the polarized sides protest against each other for weeks. In Philippines there are frequent rumors of military *coup d'etat*. In Venezuela there are attempts for arming the president with extraordinary powers. In Georgia, where the presidential system has been tried, the opposition has unified under a single roof and they are promising the people that in case they come to power the first thing they will do is abolish this system.

B) IS THERE ANY POSSIBLITY THAT THE PRESIDENTIAL SYSTEM CAN BE USED FOR THE TRNC?

Before analyzing the subject in detail, we must find an answer for the question: is there a legal possibility to allow us to a make a regime change and for a complete change of our governmental system? To find an answer to this, we must refer to our Constitution because the legal text that legally regulates the parliamentary system (governmental regime) we are using is this very constitution of 1985. In the opening passage of the Constitution, the "Turkish Cypriot People" are referred to as the unquestionable and the unconditional owner of the sovereignty of the State. In the same section again, it is stated that it was desired to constitute a democratic, secular state

based the rule of law and a “multiparty system.” In another related article of the constitution, that is Article 3 Section 1, it is stated “the sovereignty unquestionably and unconditionally lies in the hands of the people who are TRNC citizens.” Article 3 of our constitution is an unchangeable and unquestionable one. As can be seen, our constitution states both with its essence and its spirit that the sovereignty cannot be separated from the people under any condition. In addition, the constitution accepts a regime that has a multiparty essence. This acceptance of a regime characterized by a multiparty system has found place in our constitution. Now, if we analyze the constitution within this framework, the only source of state governance is the people. The legislative body that was elected by the people now is sovereign, and the government (executive) was born of this legislation. In other words, under no condition can this people-based sovereignty be altered. There is constitutional logic based on the multiparty political system and the overall sovereignty of the people. And by taking into account Article 9 of the constitution this cannot be altered. Our current constitutional system is a “parliamentary system” and all power is accumulated in the legislative body that was born of the sovereignty of the people itself. Even the executive is born of this body and it is not independent of it. Within this legal framework, any attempt towards altering the multiparty-based democratic system would be an open breach of the constitution. In a presidential system, the legislative and executive branches are brought to power by separate elections, the executive is a single person and is not accountable to the legislative body (because the executive is not born of the legislative). Shortly, the sovereignty of the people is divided into two (legislative-executive). However, our own constitution has unquestionably and unconditionally given the sovereignty to its own people and bound the execution of this system to a parliamentary regime. If we want to bring the presidential system to the TRNC as a government regime, we will need to abolish the constitution completely and to devise a brand-new constitution. Article 9 constitutes an obstacle to such alterations of the constitution (bringing a presidential system). Furthermore, to accept a multiparty-based political system is completely contradictory to the presidential system. In the US, where the genuine presidential system exists there is no multi-party system but a two-party one. Even if we assume for a moment that there are no constitutional obstacles to bring a presidential system to the TRNC, to what extent will it be possible to implement it practically, given the democratic, political and the physical situation of the country?

A. We cannot really say that the constitutional monitoring bodies function properly in our country. It is obvious that the monitoring over the executive is really weak. The most important indicators of this situation are the illegalities experienced in many governmental institutions and the late detection of these illegalities. If we do bring this presidential system to our country, who is going to check an executive body that will be in a single person and unaccountable to the legislative body? In parliamentary systems, at least the opposition within the legislative body has serious competences of checking and monitoring the executive body. The lack of this monitoring will create an

environment of indifference and relentlessness, which will pave the way to increased number of illegalities.

B. We cannot think of our political life without the political parties. Their activities, however, will be minimized in a presidential system. In the current regime, the political parties come to the people with their political agendas (with things such as their party programs and election campaign leaflets) and they are competing for power. In a presidential system, such competition will be among persons. Since the power will be in a single hand, the importance of these personalities and their ideas will be gaining importance and the ideas of the political parties will no more be discussed. Our democracy will be weakened in the same proportion of the weakening of the political parties.

C. Since the president would be the executive body, the right to select all the ministers and bureaucrats would be in the hands of a single person. Favoritism will replace partisanship. The President will designate people for the bureaucratic apparatus among his supporters, his favorites, his loyalists and probably among some profit-seekers (in the selection of ministers etc.). The bureaucracy will be full of such people; in other words full of the loyalists of the President. Qualified politicians can still come to power in the current context. However this will also be terminated with the presidential system.

D. In a presidential system, the President (executive) and the Parliament would be elected separately. In case that they both belong to the same party and support the same ideology, they could work in harmony and without any problems. However in case they have different points of view, the probabilities of the occurrence of political crises and chaos will be high. For instance if the TRNC president is from the Republican Turkish Party (CTP) and the parliamentary majority belongs to the National Unity Party (UBP), it is obvious that there will be differences of opinions and that conflicts will arise. These different views will surely create crises and chaos. Then, whatever the Parliament does, it will not be able to replace the President that holds the government in his hand, and will have no effects on the ministers. In this case, the President will veto the bills that come from the parliament with which he is already in conflict. This will make the Parliament dysfunctional. Actually in this kind of situation, the Parliament creates a new government and overcomes the problem or early elections could be done. A presidential system does not provide such chances for overcoming such crises.

E. TRNC is a microstate. It is comparably much easier to influence people's minds and reflect this at the ballot box. Presidential candidates can prepare for the election with a strong budget (through ads, establishing political cadres, promotion campaigns and financial aid for the public) and get elected whether he has qualifications for holding such a position or not. With the election of such person, both the prestige of the country and the democracy will be hurt.

F. In Presidential systems the person that gets the 51 per cent of the votes wins everything and becomes the President. If the level of participation to the

election is 60 per cent and if he gets elected by 51 per cent this actually means that he came to power with the support of only 31 per cent of the voters. In other words, a person, unwanted by 69 percent of the people could be elected as the President of TRNC. This would be an election that conflicts with democracy. In our current system, no such shortcomings are experienced. And usually those who get 50 to 65 percent of the votes represent the executive body.

G. The democratic culture in the TRNC has not yet reached the ideal state. We are currently living in a system in which partisanship is given importance and bright brains are pushed behind. We could not embrace the democracy yet and we could not establish a democratic culture similar to the US one.

H. In our country, there is a multiparty political system. The governing and opposition parties frequently debate in a strong manner and sometimes argue like they are fighting. Our parties have completely conflicting ideas and ideologies. That is to say, we do not have a US-type two-party regime and or such similar parties. From this angle, it would be very hard for the legislative and executive to perform their duties in harmony or without problems. They would only work in properly only if both bodies are held by the same party.

I. The level of respect for the TRNC constitution among the citizens is comparatively less than the respect Americans have for their constitution. Even a little attack on the US constitution is highly protested by the Americans. On the other hand in our country, the constitution gets breached, every kind of attack to the constitution can be seen and nobody shows any kind of opposition o these!

J. Our high court does not efficiently work as the American Court when democracy is concerned.

In the light of the above discussion, it is not possible to say that the replacement of our current parliamentary system with a presidential one would make things work better. Let's keep what we have in our hands for we can lose what we already have while we are looking for something better!