TURKEY'S SEARCH FOR A NEW POLITICAL SYSTEM

02

JUNE'22, ANKARA

THE PRESIDENTIAL GOVERNMENT SYSTEM EXPERIENCE IN TURKEY

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PREFACE

The system debate is arguably the most pressing and consequential subject of Turkish politics. Turkey has been having a governmental system discussion for a period of time, and the next few years will appear to be in intense debate and search.

Turkish parliamentary system experience (1876-2017) often dealt with interruptions. As a result, it has not only failed to produce general satisfaction in politics and society but also has been unsuccessful in yielding economic stability. Similarly, the outcome of the last five years of the Presidential Government System (or the Presidential System with its widespread use) could not generate stability.

The parliamentary system has had a hostile place in public memory. Because it is usually associated with military coups, the weakness of civil politics, military and civil bureaucracy tutelage over elected bodies, fragile and inconsistent coalition governments. Usually, instead of dealing with the structural shortcomings of Turkish democracy, bashing the parliamentary system was a safe debate tool under the military tutelage years. The shortcut savior happened to be the presidential system. It was supposed to protect Turkish democracy from military tutelage, political instability or coalition governments. During the 1980s and 90s, strong political leaders, such as Demirel and Özal, voiced that the parliamentary system was malfunctioning, and that Turkey should move into the presidential system. However, despite such occasional political and academic disclosures, the system change did not become a serious part of the public agenda until 2014.

The most significant break in system change occurred in the Presidential elections in 2007. As the reactions to Abdullah Gül's Presidential candidacy turned into a severe political crisis over the April 27, 2007 memorandum and the decision of the Constitutional Court to block his candidacy; the AK Party has turned to change the presidential electoral system.

The constitutional amendment electing the President by the people instead of the parliament in a referendum also gave solid political capital to the President. This new election system gave the President legitimacy of representing at least 50% of the voters. Moreover, it empowered him to push the boundaries of the classical parliamentary system with the 1982 constitution and symbolic role of the President.

Erdoğan as the first president elected directly by the people, has adopted a persistent policy of switching to the presidential system. For years, the presidents elected through parliament experienced a severe political clash with the elected governments due to their constitutional powers. The new system empowered the President with two additional power dynamics: being elected by the people (Erdogan received 52 percent) and having a ruling party in the parliament. Ironically it was not only a new power surge but also paved the roads to new clashes and rifts between elected bodies.

Between 2014-2017, the anomaly caused many political crises. After the July 15 coup attempt, the deadlock was attempted to be resolved in line with the presidential system through the initiative and support of MHP leader State Bahçeli with the motto "de facto situation should be de jure." Without much public debate, the constitutional amendment, drafted in line with the preferences of the AK Party and MHP, was adopted with 51 percent support on April 17, 2017, referendum while the July 15 coup trauma was still in effect.

The presidential system, which took effect in the June 24, 2018 elections, has also produced a high dissatisfaction over its political and administrative performance since 2018. It has been criticized for the unification of powers, weakening the checks-and-balances mechanisms, eroding the political party identities, pushing them to establish alliances, and deepening polarization. In addition, the ruling bloc, which favors the presidential system, has avoided revisions that will make the current system more operational, and further deepened the system's discomfort.

Public opinion studies show that support for the presidential system has fallen to 35 percent, and a possible referendum on the return to the parliamentary system will gather powerful support. Opposition political parties had a window of political opportunity created by dissatisfaction with the system. It helped opposition parties to develop a political strategy and rhetoric through the return to the parliamentary system. It allows many political parties with different political priorities to act together on the same goal while camouflaging the motivation to defeat Erdoğan in

elections. They are currently asking to return to the parliamentary governmental system creating a political rhetoric on the axis of authoritarianism-democracy. In this framework, the system debate and the goal of restarting the parliamentary system have become the essential issue of the political struggle between the ruling and the opposition blocs.

Starting from 2021, the opposition political parties have prepared and publicly disclosed their parliamentary system proposals. This year they formed a joint working group and agreed on the basic principles, and finally presented the public "Strengthened Parliamentary System" proposal. Now six opposition parties decided to gather at the leadership level monthly—their main agenda focusing on governmental system change. It is a game-changing step in a fractured and highly polarized Turkish political atmosphere. Will the goal of returning to the parliamentary system be good enough to keep opposition parties united in the face of the ruling alliance, is questionable. However, it would be fair to argue that the parliamentary system proposal may ripen into the political alliance of opposition.

The search and discussion of the governmental system appear to be the most critical topic of politics for the next few years. Regardless of the outcome of the June 2023 elections, the system debate will be the most crucial topic of politics in the short term. If the current ruling alliance wins, they need to reform the system. If the opposition wins, they need to keep their election promise to change the system. In any scenario, Turkey is heading towards either imposing alterations or structural reform. Therefore, the system debate will settle itself as one of the top political issues in Turkey in the coming years.

Meeting this demand and preparing enhanced research on the governmental system will play an essential role in the quest for a possible change. Comprehensive research should present a comparative, global, political, and constitutional base for the debates and assist decision makers in political parties and the public in finding an enriched discussion floor.

Within the framework of this program, Ankara Institute plan to publish ten academic analyzes that will contribute to the search for systems over the next year in order to meet this end.

The research plans to conduct two workshops with the participation of stakeholders that we predict will contribute to the system discussion and hold a detailed public opinion survey.

This study in which Serap Yazıcı evaluates Turkey's experience in the Presidential Government System constitutes the second publication of the academic contribution of 10 reports.

Over the next year, we believe that this research project, which will continue through analysis, workshops, and public surveys, will contribute significantly to the quest for a system that progresses only through the harsh contrasts of government versus opposition parties dynamics and provides qualified academic background, common sense consultancy, and poll data.

Hatem Ete Ankara Enstitüsü, Direktör

I. HISTORICAL BACKGROUND OF GOVERNMENTAL SYSTEM CHANGE

One of the most significant constitutional changes in the Republic took place with the Law No. 6771 dated 21 January 2017 that went into force with the referendum of 16 April 2017. This amendment brought into force a system of government, termed the "Presidential Government System,"[1] that had no precedent worldwide. However, the roots of the debates in Turkey on the change of the system of government go back to the spring of 1980.

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It will be remembered that the term of office of President of the Republic Fahri Korutürk came to an end in April 1980, but no agreement took place in the Assembly on the election of a new president. The reason for this was that the Assembly seats were shared by a great number of political parties as a result of the then current system of proportional representation. As a result, no party was able to win the absolute majority of seats enabling it to form a single-party government, and the parliamentary process lost its decision-making capacity. Faced with this situation, the daily newspaper Tercüman organized a Constitutional Seminar in March 1980, and the Journal Yeni Forum a Constitutional Project bringing the topic to the attention of academics and political actors.

I wrote in 2017 that "While some of the academics who participated in the seminar organized by Tercüman defended transition to a French-style semi-presidentialism, others preferred the continuation of a parliamentary system but with wider powers for the President of the Republic. The Forum journal proposed a transition to a semi-presidential system similar to that adopted in France with the Constitution of 1958, but with a stronger position for the Prime Minister *vis-à-vis* the President of the Republic."[2]

1 In Turkish, the name of the new system is *Cumhurbaşkanlığı Hükümet Sistemi*. *Cumhurbaşkanlığı* is a compound word where *Cumhur* means people and *başkan(lığı)* means both president and presidency. Instead of calling it directly "presidential system," the new system is named using both the word president and the word government together.

2 Serap Yazıcı, Başkanlık ve Yarı-başkanlık Sistemleri: Türkiye İçin Bir Değerlendirme, 4th edition, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2017, p. 159-160.

Debates on the system of government continued during the making of the 1982 Constitution in the Constituent Assembly formed after the military coup of September 12. The Consultative Chamber, the civilian wing of the Constituent Assembly, asked for the views of universities and various institutions such as the high courts on the new constitution. Those institutions defended the preservation of a parliamentary system but with strengthened powers for the President of the Republic. During the Consultative Chamber debates on the executive branch, a few members defended a presidential or a semipresidential system. Universities, the Constitutional Court, and bar associations strongly objected to this idea, however, arguing that it would be against the tradition of the Turkish Republic and that it could easily transform into a dictatorship.

Following these heated debates, the Constitution of 1982 created an office of the Presidency of the Republic with the broad powers, but provided that he/she will be elected by Parliament. On the other hand, the Constitution created parliamentary mechanisms in its provisions on the Council of Ministers. Thus, a special system of government different from classical parliamentarism and approaching to a semi-presidential system came into being. This hybrid system of government led to many problems. These problems, and their encouraging role in the subsequent transition to the Presidential Government System, will be discussed below.

With the Constitution of 1982, a special system of government different from classical parliamentarism and approaching to a semi-presidential system came into being.

It should be pointed out that these debates on the system of government, which began in 1980, have been among the longest lasting and most critical discussions in Turkey. Debates were repeated with certain interruptions depending on the conjuncture and especially on the attitude of the political actors occupying the posts of Prime Minister or the President of the Republic. Indeed, Turgut Özal, the Prime Minister in the late 1980s and later president, defended the popular election of the President of the Republic with a five-year term of office and the potential for a second term. Özal's views were supported by the True Path Party led by Süleyman Demirel, but opposed by social democratic parties, which defended the election of the President of the Republic by Parliament on a consensual basis. While Özal's views were discussed for a while in public opinion, they were not presented in a formal constitutional amendment proposal.

Nearly ten years after the debates on the system of government started by Özal, the issue was again brought to the agenda by Süleyman Demirel, then the President of the Republic. However, Demirel's views, just like those of Özal, did not find sufficient support in academic and political circles, and thus they did not become a formal constitutional amendment proposal.

The repetition of debates on the system of government at ten-year intervals has become almost a custom in Turkish polities. In 2005, Prime Minister R. T. Erdoğan, the Minister of Justice Cemil Çiçek, and the Chairman of the Constitutional Commission Prof. Burhan Kuzu expressed views on transition to a presidential system. Although these views were publicly discussed for a while, they did not become a formal constitutional amendment proposal.[3] However, the desire of R. T. Erdoğan, leader of the Justice and Development Party (AKP), to make a transition to a presidential system and thus to possess all executive powers did not come to an end.

Following the general election of 2011, a Constitutional Compromise Committee was formed by all political parties represented in the Grand National Assembly. The main reason for this was that all parties had promised to make a new constitution in their election platforms. Thus, the activities of the Committee were focused on the making of an entirely new constitution, rather than a partial amendment. Although the Committee was able to agree on nearly sixty articles concerning civil rights, its work was ultimately blocked over the proposal by the AKP on change of the system of government. Article 28 of the AKP proposal stated that *"The Grand National Assembly and the President of the Republic can unilaterally decide to renew the simultaneous election of the two. If the Assembly decides to renew elections during the second term of the President of the Republic, he/she can be a candidate for another term."* Thus the proposal allows the legislative and executive branches to renew the election of each other, submitting themselves also to new elections. This is an important deviation from the US-model presidential system in that, according to the proposal, the legislative and executive organs will not be elected for a fixed term of office.

The main reason that blocked the work of the Committee was the proposal by the AKP on change of the system of government.

Article 38 of the proposal submitted to the Committee by the AKP ran as follows: *"The President can issue Presidential decrees when he thinks it necessary for the conduct of general policy. Presidential decrees can be issued in areas where no applicable legal provisions exist. Civil rights and liberties and political rights and liberties cannot be regulated by decrees. In cases where different provisions exist between laws and decrees, provisions of law shall be applied."* This provision is also a real deviation from the US-style presidentialism, since the provision allows the President to by-pass an opposition-dominated parliament, instead of seeking a compromise with it for laws required by political circumstances.

3 Serap Yazıcı, Demokratikleşme Sürecinde Türkiye, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2012, p. 212.

The AKP's proposal was not accepted by the representatives of the other parties in the Committee. Despite this disagreement, these representatives continued to take part in the work of the Committee. The AKP representatives, on the other hand, caused the dissolution of the Committee under Article 15 of the document regulating the work of the Committee by not attending three consecutive sessions. This article states that *"The work of the Committee comes to an end when its proposal is adopted by the Plenary and entered into force, or when one of the political parties withdraws from it or is considered having withdrawn. A political party who does not attend at least three sessions without an excuse is considered having withdrawn."*[4]

1. Problems Caused by the Hybrid System of Government Adopted by the Constitution of 1982

The most important problem of the Hybrid System is political tendencies between, on the one hand, the President of the Republic who holds wide powers, and on the other hand the parliamentary majority and the Council of Ministers it produces.

As pointed out above, the Constitution of 1982, while accepting all features of parliamentarism in its articles concerning the Council of Ministers, departed from it by giving large constitutional powers to the President of the Republic. Thus, the Constitution adopted a hybrid system of government that can be described neither as parliamentary nor as semipresidential. This government system has caused various problems in practice.

Probably the most important of such problems is the possibility of differing political tendencies between, on the one hand, the President of the Republic who holds wide powers, and on the other hand the parliamentary majority and the Council of Ministers it produces. In such cases, the President of the Republic, using his constitutional powers, can render the parliamentary majority and the Council of Ministers ineffective. In fact, the eighth President of the Republic Turgut Özal led to a conflict between the presidency and the government by refusing or delaying signature of the decrees of the government led by Süleyman Demirel. Faced with this situation, the government passed the Law No. 3825 dated June 25, 1992, publicly known as the by-pass law. Accordingly, the President's power to sign certain decrees concerning judicial appointments was abolished.[5]

4 Serap Yazıcı, "Yeni Anayasa Çalışmaları ve Başkanlık Sistemi Tartışmaları", Türkiye'de Hukuku Yeniden Düşünmek, (ed.) Haluk İnanıcı, İletişim Yayınları, İstanbul, 2015, p. 76-79.

5 This law was called a by-pass law because it made changes to several laws (Nos. 2802, 2992, 2461) and decrees with the force of law (Nos. 190 and 270) abolishing the President's power to sign certain appointments requiring the joint signature of the President and the Council of Ministers. See for details, Serap Yazıcı, Başkanlık ve Yarı-başkanlık Sistemleri: Türkiye İçin Bir Değerlendirme, İstanbul Bilgi Üniversitesi Yayınları, 4th edition, İstanbul, 2017, p. 148-149.

Conflicts between the President of the Republic and the government continued after the election of Süleyman Demirel to presidency. Notably, as the ninth President of the Republic Demirel played a major role in forcing the Welfare-True Path government to resign in order to enforce the decision of the National Security Council taken on February 28, 1997, and in the formation of the ANAP– DSP–DTP government with the outside support of the CHP. Thus, the President had a certain influence on the policies to be followed by the Council of Ministers.

These problems continued after the completion of Demirel's term of office in April 2000, and the election to presidential office of Ahmet Necdet Sezer, at that time the President of the Constitutional Court. In August 2000 Sezer returned to the Council of Ministers on constitutional grounds a decree with the force of law permitting the firing of public personnel. Sezer then repeated this refusal a second time.[6]

Interestingly Sezer, while he was the President of the Constitutional Court, had criticized the wide powers given to the President by the Constitution of 1982 and the hybrid system of government it created. He did not refrain from using such powers, however, after he was elected the President of the Republic.[7] This attitude continued after the Justice and Development Party won the majority of the Assembly seats in the election of November 3, 2002, as Sezer obstructed government policies by refusing to sign the so-called triple decrees that have to be signed by the President, the Prime Minister, and the minister concerned.

Sezer, while he was the President of the Constitutional Court, had criticized the wide powers given to the President by the Constitution of 1982. He did not refrain from using such powers, however, after he was elected the President of the Republic.

Another problem created by the hybrid system of government adopted by the Constitution of 1982 is its conflict with the principle of parallelism of power and responsibility. This principle implies that all organs and agencies can be held responsible for their use of their powers. Another result arising out of this principle is that unaccountability is possible only for organs and agencies without power. In other words, wherever there is power, there is responsibility, and whenever there is no accountability, there is no power. The Constitution of 1982, by declaring the President of the Republic unaccountable (the first version of Article 105) despite the wide powers accorded to this office, created a structure in conflict with the principle of paral-

6 It should be pointed out that Sezer's refusal to sign the Decree with the Force of Law was based on valid constitutional grounds. The government led by Ecevit had prepared a Decree permitting the firing of public employees in connection with the fight against reactionary and terror activities. However, the Decree violated the provision of Article 91 of the Constitution on the limits of such decrees. Thus, Sezer had twice returned this Decree to the Council of Ministers on these constitutional grounds. In any case, this incident constituted a serious conflict between the two parts of the executive branch.

7 Serap Yazıcı, Demokratikleşme Sürecinde Türkiye, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2012, 2nd edition, p. 247-248.

lelism of power and responsibility. Thus, while the Presidents of the Republic can obstruct or orient government policies using their wide powers, they are not held responsible for such action. On the other hand, political parties which acquire the governing power by winning a majority of parliamentary seats, become unable to pursue policies they promised to the voters. This created a strange structure where the powerful President cannot be held responsible, but governments that are responsible to parliament and that must account for their action to voters in the next election cannot carry out their political programs.

Furthermore, while the Constitution granted wide powers to the President of the Republic in its Article 104 and elsewhere, it did not make it clear which of these powers he can use alone, and which require the counter-signature of the Prime Minister and the minister concerned. This led to debates on the use of such powers in practice.

The Constitution of 1982, by declaring the President of the Republic unaccountable despite the wide powers accorded to this office, created a structure in conflict with the principle of parallelism of power and responsibility.

Ergun Özbudun argues that the problem can be solved by taking into account the requirements of the rule of law and of parliamentarism; thus it will be possible to decide which of the Presidential powers he can use alone, and which ones require counter-signature. He further argues that first,

> *We should look whether the article concerned of the Constitution has sufficient clarity in this matter. For example, the power to appoint the Chief of the General Staff mentioned in Article 108 can be used only jointly with the Council of Ministers under Article 117 (para. 4): "The Chief of the General Staff shall be appointed by the President of the Republic upon the proposal of the Council of Ministers." Similarly, the power to send the representatives of the Turkish State to foreign countries, to accept the representatives of foreign countries to Turkey, to order the use of the Turkish Armed Forces, to issue law amending decrees in times of emergency and martial law, to sign executive decrees, by their very nature, are powers that can be used only jointly with the Council of Ministers. On the other hand, the President can use alone his power to pardon or reduce criminal sentences on account of permanent illness or old age, since these acts are based on humanitarian considerations and therefore do not involve ministerial responsibility. Finally, according to the clear provision of the Constitution, he can use his power to appoint or dismiss ministers only upon the proposal of the Prime Minister.*
>
> *On the contrary, the President of the Republic should use alone those powers concerning the legislature and the judiciary granted to him on account of his title of the Head of the State. The President's certain powers concerning the executive branch, such as to preside over the Council of Ministers when he thinks necessary or to call to the Council to session under his chairmanship, to represent the chief command of the Turkish Armed Forces in the name of the Grand National Assembly, to call the National Security Council to meeting and to chair it, are powers that the President can use alone since they are entirely ceremonial and representational in nature. Finally, the President's power to appoint the Prime Minister should be used alone, since*

this should not be made conditional upon the counter-signature of the former Prime Minister who had resigned or voted out of office.[8]

Finally, another problem caused by the hybrid nature of the Constitution of 1982 is that election of the President of the Republic has become a real competition for power. In contrast, in a classical parliamentary republic where the President has only symbolic powers, election for this office becomes a routine and ordinary affair. However, as will be pointed out below, the formula in the original text of Article 102 concerning presidential elections prevented such a deadlock until the election of the eleventh President of the Republic.

2. The Constitutional Amendment of 2007 and Its Consequences

In the November 3, 2002 parliamentary election, the Justice and Development Party won nearly two-thirds of the Assembly seats. This led to certain arguments, lacking any constitutional basis, that this Assembly should not use its power to elect the next President of the Republic. Such arguments were based on the fears of the state elites that the AKP would pursue anti-secularist policies. Therefore, these elites were concerned that the AKP candidate would be elected President and thus undermine the secular foundation of the State by using his wide powers.

The fact that the Justice and Development Party won nearly two-thirds of the Assembly seats led to certain arguments, lacking any constitutional basis, that this Assembly should not use its power to elect the next President of the Republic.

Such concerns led Mr. Sabih Kanadoğlu, the honorary Chief Prosecutor of the Court of Cassation, to put forward a thesis in December 2006 that was not compatible with the Constitution. According to this thesis, the decisional quorum in Article 102 of the Constitution regulating the election of the President of the Republic is also the meeting quorum. Therefore, if the two-thirds majority (367) of the full membership of the Assembly is not present in the first round, no vote can be taken. If such a voting takes place, it will be a *de facto* amendment of the Standing Order of the Assembly, and therefore will constitute a violation of the Constitution.[9]

State elites continued to defend these views till April 27, 2007 when the first vote on the election of the eleventh President of the Republic took place. Following the first voting, it was recorded that candidate Abdullah Gül received 357 votes, but

8 Ergun Özbudun, Türk Anayasa Hukuku, 13th edition, Yetkin Yayınları, Ankara, 2012, p. 331-332. Özbudun's arguments are based upon the original text of the Constitution. The Presidential Government System put an end to the dualist nature of the executive and created an entirely monist system. Thus, all of the articles mentioned above were changed.

9 Sabih Kanadoğlu has explained this thesis which is incompatible with the Constitution in his article published in Cumhuriyet newspaper. See Sabih Kanadoğlu, "AKP Tek Başına Seçemez", Cumhuriyet Gazetesi, 26 December 2006.

remained below the required quorum, and that the next round would take place on May 2, 2007. On the same day the main opposition party CHP took the matter to the Constitutional Court, following Sabih Kanadoğlu's argument that the meeting quorum stated in Article 102 of the Constitution was not obtained and therefore the Assembly's Standing Orders were violated. The Court, accepting this argument, rendered its famous 367 verdict.[10] Article 102 of the Constitution is very clear, however, and it refers only to decisional quorums:

> *Of the first two of the votes, to be taken with at least three days intervals, if no candidate gets two-thirds majority of the full membership, a third vote will be taken, and in this vote the candidate who gets the absolute majority of the full membership shall be elected the President of the Republic. If the absolute majority of the full membership is not obtained in this voting, there will be a fourth voting between two candidates who received most vote in the third vote. If in this voting the President of the Republic cannot be elected by the absolute majority of full membership, new elections for the Grand National Assembly will be held immediately.*

Main opposition party CHP took the matter to the Constitutional Court, following Sabih Kanadoğlu's argument, and the Court, accepting this argument, rendered its famous 367 verdict.

Thus, no statement exists in this provision to the effect that the quorums mentioned are also meeting quorums. On the contrary, the quorums mentioned in the Article are decisional quorums.[11] Furthermore, in presidential elections until 2007, these quorums were considered decisional; thus, the eighth President Turgut Özal, the ninth President Süleyman Demirel, and the tenth President Ahmet Necdet Sezer were elected on the third vote with the absolute majority of the full membership. Finally, the Article aims at preventing deadlocks in the election of the President, as was the case prior to September 12, 1980. Accordingly, the eighth, ninth and tenth Presidents were easily elected without a deadlock. Therefore, the Constitutional Court's famous 367 verdict is not compatible with the Constitution.

The AKP majority's response to this unconstitutional decision by the Constitutional Court was to present a hastily prepared constitutional amendment proposal. The proposal reduced the seven-year term of the President to five years, permitted election for a second time, and introduced the popular election of the President. The amendment Law No. 5678 was adopted by the Grand National Assembly on May 31, 2007, and adopted by the referendum of October 21, 2007 with a majority of 68.95

10 AYM, E. 2007/45, K. 2007/54, T. 01.05.2007. For a detailed analysis of the Court decision see Serap Yazıcı, Yeni Bir Anayasa Hazırlığı ve Türkiye, Seçkincilikten Toplum Sözleşmesine, extended 3rd edition, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2016, p. 234-237.

11 Kemal Gözler states that there are many examples of qualified decision quorums in his examination of world constitutions, but he has not come across a qualified meeting quorum. For the author's work on the subject see Kemal Gözler, "Cumhurbaşkanlarının Seçimi: Karşılaştırmalı Anayasa Hukuku İncelemesi", *Terazi: Aylık Hukuk Dergisi,* Vol. 2, No. 9, May 2007, p.19-29.

per cent.[12] With this change, the problem-creating potential of the system of government increased, since the President, with the moral authority he obtains from popular election, can use his wide constitutional powers to challenge the Council of Ministers and the parliamentary majority. This is exactly what has happened.

The first popular election of the President of the Republic took place on August 10, 2014. Thus, the twelfth President R. T. Erdoğan became the first popularly elected President and took oath on August 28, 2014. However, before taking office he determined the next Prime Minister and the leader of the Justice and Development Party. Following the Central Executive Committee meeting of his party on August 21, 2014, he announced that Professor Ahmet Davutoğlu, at that time the Minister of Foreign Affairs, would become the party leader and the Prime Minister.[13]

3. Increased Potential for Conflict within the Executive and the Constitutional Amendment of 2017

The popular election of the twelfth President increased the potential for conflict between the two parts of the executive. This was caused by Erdoğan's acting simultaneously both as the President of the Republic and as the leader of the AKP. For example, Erdoğan continued to interfere with the interest and exchange rate policies of the Central Bank just as he did during his premiership, even though the Central Bank was supposed to be independent according to law. On February 25, 2015 Erdoğan publicly and heavily blamed the Chairman of the Central Bank in the following words: "You are fighting for independence against us; are you dependent on someone else? Tell me so. Central Bank is making a mistake in interest rates. The current rates are not compatible with Turkey's economic realities."[14]

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When the National Intelligence Agency Director Hakan Fidan resigned from his post in order to become a candidate for parliament before the election of June 7, 2015, Erdoğan interfered as if he was the leader of the AKP and caused him to reverse his decision.[15]

12 Official Gazette dated 31 October 2007 and numbered 26686.

13 "AKP'nin Tercihi Davutoğlu", BBC News Türkçe, 21.08.2014, date of access: 05.04.2022, https://www.bbc.com/turkce/haberler/2014/08/140821_yeni_basbakan

14 "Erdoğan'dan Başçı'ya: Başka Yere Bağımlılığın mı Var?", Cumhuriyet Newspaper, 25.02.2015, date of access: 04.04.2022, https://www.cumhuriyet.com.tr/haber/erdogandan-basciya-baska-yere-bagimliligin-mi-var-221538

15 "Hakan Fidan Aday Oluyor", Sözcü Newspaper, 07.02.2015, date of access: 04.04.2022, https://www.sozcu.com.tr/2015/gundem/hakan-fidan-aday-oluyor-735641/ ; "Erdoğan: Fidan'ın Adaylığına Olumlu Bakmıyorum", Aljazeera Turk, 08.02.2015, date of access: 04.04.2022, http://www.aljazeera.com.tr/haber/erdogan-fidanin-adayligina-olumlu-bakmiyorum ; Fikret Bila, "Fidan 'Sır Küpüm'", Milliyet Newspaper, 10.02.2015, date of access: 04.04.2022, https://www.milliyet.com.tr/yazarlar/fikret-bila/fidan-sir-kupum-2011269 ; "Hakan Fidan

Erdoğan also reacted strongly to the government's plan to send an observation group to İmralı, which shows that he considered himself still the leader of the government. Thus he said, "I learn it from newspapers. I have no direct knowledge of it and I do not favor it."[16]

This reaction by the President of the Republic was politely criticized by the Deputy Prime Minister Bülent Arınç who argued that power and responsibility belonged to the Council of Ministers. Erdoğan's reaction to these statements was even stronger: "How can the President of the Republic remain outside polities. They are looking for a window mannequin for themselves, I am not a window mannequin."[17] Further, "The parliamentary systems for someone starting from 1876, for others from 1924, and for still others from 1946, has been taken to the waiting room as of August 10 by our nation, with no chance to return. How long will this waiting period last? Either till a constitutional base will be found for the existing practice, or till a new system will be substituted in place of the present one. This decision will be made in the June 7 elections."[18]

Conflict between President of the Republic Erdoğan and the government continued, however, and Erdoğan created conditions for the resignation of Ahmet Davutoğlu from prime ministership and the AKP leadership.

However, contrary to Erdoğan's expectations, the general elections of June 7, 2015 did not give the AKP even sufficient majority to form a single-party government, restricting it to a role as major partner of a coalition government. Erdoğan prevented this, however, by renewing parliamentary elections using the power given to him by the then Article 116 of the Constitution. In the new elections of November 1, 2015, the AKP won the majority for a single-party government. Conflict[19] between President of the Republic Erdoğan and the government continued, however, and Erdoğan created conditions for the resignation of Ahmet Davutoğlu from prime ministership and the AKP leadership. In the AKP Congress on May 22, 2016, Binali Yıldırım was elected the party leader and afterwards appointed as Prime Minister, and performed in harmony with Erdoğan.

Milletvekilliği Adaylığını Geri Çekti", BBC News Türkçe, 09.03.2015, date of access: 04.04.2022, https://www.bbc.com/turkce/haberler/2015/03/150309_hakanfidan_adayliktan_cekildi

16 "Erdoğan'dan İzleme Heyeti Çıkışı: Gazetelerden Öğreniyorum, Olumlu Bakmıyorum", sendika.org, 20.03.2015, date of access: 04.04.2022, http://www.sendika.org/2015/03/erdogandan-izleme-heyeti-cikisi-gazetelerden-ogreniyorum-olumlu-bakmiyorum/

17 "Erdoğan: Ben Konu Mankeni Değilim", cnnturk.com, 21.03.2015, date of access: 04.04.2022, http://www.cnnturk.com/haber/turkiye/erdogan-ben-konu-mankeni-degilim

18 "10 Ağustos'ta Cumhurbaşkanı'nı Halkın Seçmesiyle Bir Dönem Sona Ermiştir", Sabah Gazetesi, 22.03.2015, date of access: 04.04.2022, http://www.sabah.com.tr/gundem/2015/03/22/10-agustosta-cumhurbaskanini-halkin-secmesiyle-bir-donem-sona-ermistir

19 See my previous work on the conflicts between President Erdoğan and the government under Ahmet Davutoğlu's Prime Ministry: Serap Yazıcı, "Turkey in the Last Two Decades: From Democratization to Authoritarianism", European Public Law, Vol. 21, No. 4, December 2015, p. 653-655.

On July 15, 2016, Turkey faced the serious danger of a coup d'état, which however quickly crashed. On July 22, 2016, the Council of Ministers under the chairmanship of the President of the Republic declared a state of emergency under Article 120 of the Constitution, and this was confirmed by Parliament. Thus, the executive branch and the administrative authorities obtained much wider powers compared to normal times. The President of the Republic, using such powers, governed the country entirely by himself and this caused critical comments by the MHP leader Devlet Bahçeli at the party group meeting of October 11, 2016. These comments that led the way to the Presidential Government System were as follows:

> *What is most proper and healthy for us is that the President should not force conditions to create a de facto presidentialism and respect legal and constitutional limits. If this is not possible, the second alternative would be to seek ways and methods to give legal dimensions to the actual situation... If the AKP continues to insist on a presidential system, again there will be two options: First, if the AKP has prepared a constitutional amendment proposal, it should present it to parliament... Our preference, as always, is the continuation of the parliamentary system, and to strengthen and reform it. However, if our nation says otherwise, obviously we will have nothing to say... Our concerns and criticisms about the presidential system are known... In our opinion, the mystery about Turkey's system of government should come to an end, and should be radically solved.*[20]

Following the referendum of April 16, 2017, it was announced that the proposal had been adopted by a majority of 51.41 per cent.

About a month after Bahçeli's call, the AKP experts presented the draft they had prepared to the MHP authorities. Delegates of the two parties completed their work in a short time and prepared a constitutional amendment proposal. This proposal, presented to the Speaker's Office on December 10, 2016, was rapidly passed through the Constitutional Committee and the Plenary and became law on January 21, 2017, and was accordingly put to referendum. Following the referendum of April 16, 2017, it was announced that the proposal had been adopted by a majority of 51.41 per cent.[21] However, the Supreme Election Council's decision to accept unstamped ballots as valid, against the provisions of the law, created questions about the legitimacy of the referendum starting from the first days.[22]

There are several important points that must be stressed here. The first is that the MHP leader Devlet Bahçeli, even though he had earlier criticized Erdoğan's propos-

20 "Bahçeli'den Başkanlık Sistemi Çıkışı", NTV, 11 October 2016, date of access: 04.04.2022, https://www.ntv.com.tr/turkiye/bahceliden-baskanlik-sistemi-cikisi,c1WeUw7SfUaRhJHd_4gJAQ

21 Official Gazette dated 27 April 2017 and numbered 30050.

22 See for a detailed study on the subject Kemal Gözler, "Mühürsüz Oy Pusulası Tartışması: YSK'nın 16 Nisan 2017 Tarih ve 560 sayılı Kararı Hakkında Bir İnceleme", http://www.anayasa.gen.tr/muhursuz.html (Konuluş Tarihi: 19 April 2017), date of access: 18.04.2022.

al for a presidential system, now heatedly supported the Presidential Government System which is incompatible with the US-style presidentialism. Furthermore, while Erdoğan had defended the presidential system since 2005 on various occasions, this constitutional amendment proposal was submitted to the public not with the title of presidential system, but with the wording Presidential Government System. As will be seen below, the Constitutional Amendment Law No. 6771, dated January 21, 2017 departs from the US-style presidential system in many respects. Therefore, to call it a presidential system, even a Turkish-style presidential system, is impossible. The Justice and Development Party used the phrase "Presidential Government System" in the booklet "Our Decision is Yes," with the hope that the proposed system would be more easily accepted by the public.[23]

Erdoğan had defended the presidential system since 2005 on various occasions, this constitutional amendment proposal was submitted to the public not with the title of presidential system, but with the wording Presidential Government System.

On the other hand, while the amendment proposal was debated in the Assembly, the country was under emergency rule. Within this repressive climate, government authorities and the administrative agencies restricted constitutional rights and liberties beyond constitutional limits. The Council of Ministers meeting under the chairmanship of the President of the Republic issued unconstitutional emergency decrees with the force of law, leading to the suffering of thousands of innocent citizens.[24] Thus, the constitutional amendment that made transition to the Presidential Government System was realized not in a free and democratic milieu, but in a real atmosphere of pressure and fear. This explains why some constitutions forbid constitutional amendments during periods of emergency rule. For example, both article 169 of the Spanish Constitution of 1978 and article 289 of the Portuguese Constitution of 1976 impose this restriction.[25]

Thus, the constitutional amendment realizing transition to the Presidential Government System enabled authoritarian rulers to deconstitutionalize the country under the pretext of an emergency situation. In this respect the constitutional amendment of 2017 is a concrete example of what David Landau described as abusive constitutionalism. In his words,

> *Abusive constitutionalism involves the use of the mechanisms of constitutional change — constitutional amendment and constitutional replacement — to undermine democracy. While tra-*

23 Kemal Gözler, "Cumhurbaşkanlığı Sistemi mi, Başkanlık Sistemi mi, Yoksa *Neverland* Sistemi mi? 16 Nisan'da Neyi Oylayacağız?", http://www.anayasa.gen.tr/neverland.htm (Konuluş Tarihi: 24 February 2017), date of access: 18.04.2022.

24 For details see Serap Yazıcı, "Olağanüstü Hal Kanun Hükmünde Kararnameleri: Kamu Görevinden İhraçlar ve Yol Açtıkları Hukuka Aykırılık Sorunları", Metin Günday Armağanı, Cilt 2, Atılım Üniversitesi Yayınları, Ankara, 2020, p. 1501-1555; Kemal Gözler, "15 Temmuz Kararnameleri: Olağanüstü Hal Kanun Hükmünde Kararnamelerin Hukukî Rejiminin İfsadı Hakkında Bir İnceleme", Ankara Barosu Dergisi, 2017/1, p. 47.

25 Kemal Gözler, Anayasa Hukukunun Genel Esasları, Ekin Yayınevi, Bursa, 2015, p. 61.

ditional methods of democratic overthrow such as the military coup have been on the decline for decades, the use of constitutional tools to create authoritarian and semi-authoritarian regimes is increasingly prevalent. Powerful incumbent presidents and parties can engineer constitutional change so as to make themselves very difficult to dislodge and so as to defuse institutions such as courts that are intended to check their exercises as power. The resulting constitutions still look democratic from a distance and contain many elements that are no different from those found in liberal democratic constitutions. But from close up they have been substantially reworked to undermine the democratic order.[26]

Kemal Gözler sees this constitutional amendment as a typical example of abusive constitutionalism. He argues in his article written before the April 16, 2017 referendum that

the proposed system is a system of the unity of powers concentrated in the President of the Republic. But this is not honesty admitted to the people, but a real system of unity of powers is marketed to the people under the label of 'presidential system' or the 'President of the Republic system.' If at the end this constitutional amendment is endorsed by the people, not a presidential system, but a system of unity of powers where all powers will be concentrated in the President of the Republic will be established. Thus, democracy will not be strengthened; on the contrary, the power of the government will be increased, its term of office will be lengthened. This is a typical example of abusive constitutionalism.[27]

Ergun Özbudun, who analyzes the recent political changes in Turkey, argues that it has weakened the competitiveness dimension of the system, and strengthened its tendency toward authoritarianism. Thus, he describes Turkey's political system in terms of the concept "competitive authoritarianism" developed by Steven Levitsky and Lucan A. Way.[28] The constitutional amendment of 2017 is an example of abusive constitutionalism that strengthened the authoritarian tendency of the system.[29]

The constitutional amendment of 2017 is an example of abusive constitutionalism that strengthened the authoritarian tendency of the system.

This system of government leads to the establishment of an arbitrary government, destroys horizontal and vertical accountability mechanisms, and deprives citizens of their constitutional rights by neutralizing the elements of the rule of law, as will be analyzed below.

26 Kemal Gözler, "16 Nisan'da Oylayacağımız Anayasa Değişikliği Bir 'Suistimalci Anayasa Değişikliği' midir?", http://www.anayasa.gen.tr/suistimalci.htm (Konuluş Tarihi: 1 March 2017). See David Landau's article on the concept of abusive constitutionalism: David Landau, "Abusive Constitutionalism", *University of California Davis Law Review*, Vol. 47, No. 1, 2013, p.189-260, http://lawreview.law.ucdavis. edu/issues/47/1/Articles/47-1_Landau.pdf

27 Kemal Gözler, "16 Nisan'da Oylayacağımız Anayasa Değişikliği Bir 'Suiistimalci Anayasa Değişikliği' midir?", http://www.anayasa.gen.tr/suistimalci.htm (Konuluş Tarihi: 1 March 2017), date of access: 18.04.2022.

28 Steven Levitsky and Lucan A. Way, Competitive Authoritarianism: Hybrid Regimes After the Cold War, Cambridge University Press, 2010.

29 Ergun Özbudun, Anayasalcılık ve Demokrasi, Yetkin Yayıncılık, Ankara, 2019, p. 140-146.

II. THE PRESIDENTIAL GOVERNMENT SYSTEM

Although the system of government adopted by Law No. 6771 dated January 21, 2017 gives at first sight the impression of a presidential system, is in fact entirely different from it. In fact, while the US-type presidential system depends on the strict separation of powers, the Presidential Government System leads to unity of powers giving large powers to the President of the Republic in legislative, executive and judicial domains. Thus, while the US model is defined as a real system of checks and balances, the system adopted in Turkey leads to a truly arbitrary government by giving the President unchecked powers.

1. From Dualist Executive to Monist Executive

While the US model is defined as a real system of checks and balances, the system adopted in Turkey leads to a truly arbitrary government by giving the President unchecked powers.

Transition to the Presidential Government System led to radical changes in the structure and functioning of the executive. With this change, the previously dualist executive composed of the President of the Republic and the Council of Ministers was transformed into a monist one represented only by the President of the Republic. This also caused radical changes in the functioning of the executive. Previously, a large part of the executive power was exercised by the Council of Ministers. Since the Council of Ministers was a collective body, its decisions required the signatures of the Prime Minister and the ministers. This collective structure naturally encouraged a process in which decisions were taken by deliberation and compromise.

In the monist model adopted by transition to the Presidential Government System, now all executive decisions are taken by the President of the Republic. Thus, the decision-making process is no longer a deliberative one. That the President has a cabinet does not give this process a collective nature, since the ministers in this cabinet can only make recommendations, with no power to take part in the decision-making. Furthermore, since paragraph 8 of Article 104 of the Constitution gives the President an absolute power to appoint or dismiss the ministers, the ministers cannot freely perform even this consultation function. The President can easily dismiss a minister whose views he does not like. Furthermore, ministers who are in the position of an appointed bureaucrat cannot use the right of resignation which an ordinary bureaucrat can use. Instead, a new practice developed where ministers ask for forgiveness for leaving their posts. All this shows that with this transition a model of monist executive was adopted. The wide powers given to the President of the Republic by this system will be briefly analyzed below.

a. Presidential Decrees

Presidential decrees were regulated for the first time by the original version of Article 107 of the Constitution of 1982. The provision runs as follows: *"The structure, organization, functioning of and appointments to the Secretarial General of the Presidency of the Republic shall be regulated by Presidential decrees."* Thus, in the original version of the Constitution, such decrees were restricted only to one area.

With the change of the system of government, paragraph 17 of Article 104 gave the President the authority to issue decrees in a very large area. The provision runs as follows:

> *The President of the Republic can issue presidential decrees in matters related to the executive power. Fundamental rights and personal rights and duties regulated in the first and second chapters of the second part of the Constitution, and political rights and duties regulated in the fourth chapter cannot be regulated by presidential decrees. No presidential decrees can be issued in matters which under the Constitution shall be regulated exclusively by laws. No presidential decree can be issue in matters clearly regulated by law. In the event of presidential decrees and laws containing different provisions, the provisions of the law shall be implemented. In case the TGNA adopts a law on the same subject, the presidential decree becomes null and void.*

Presidential decrees were regulated for the first time by the original version of Article 107 of the Constitution of 1982.

As can be seen, the decree authority granted to the President by the 17th paragraph of the new Article 104 of the Constitution covers an extraordinarily wide area. Even though the paragraph stipulates certain limitations for these transactions, they are vague and ambiguous in nature. This gives the impression that the President can by-pass the legislature through decrees in practice.

In addition, an examination of the presidential decrees adopted in the period starting in July 2018, when the Presidential Government System entered into force, reveals that these decrees were prepared extraordinarily carelessly. As of 18 April 2022, when this work was completed, a total of 98 Presidential decrees had been issued. Of these, 63 were issued to amend or abolish previous decrees. This shows that the Office of the President had prepared these decrees without sufficient care. Moreover, the replacement of presidential decrees with subsequent decrees has weakened predictability,[30] which is one of the basic elements of the rule of law. Thus, presidential decrees strengthen the arbitrariness in government.

30 For the principle of predictability see Serap Yazıcı, "Hukuk Devleti ve Yargının Bağımsızlığı", Türkiye'de Siyasal Yaşam: Dün, Bugün, Yarın, (ed.) Mehmet Kabasakal, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2016, p. 71, 85.

In accordance with the first paragraph of Article 148 of the Constitution, the review of the Constitutional Court over these decrees does not provide sufficient guarantees, since ten of the fifteen members of the Constitutional Court are appointed by the currently incumbent President. Moreover, the independence of the judiciary has weakened significantly since the coup attempt of 15 July 2016. Thus, the effectiveness of the judicial review over presidential decrees is dubious.

Another important point is that the President of the Republic's power to issue decrees derives directly from the Constitution. Therefore, he does not need the permission of the Assembly for this. Briefly, it is a power which does not depend on the principle of the legality of administration. In this it differs from the Council of Ministers' power to issue law-amending decrees under the abolished Article 91 of the Constitution.

All these points indicate that the constitutional amendment not only led to a monist executive but also caused a concentration of power within it, without proper checks and balances.

As of 18 April 2022, when this work was completed, a total of 98 Presidential decrees had been issued. Of these, 63 were issued to amend or abolish previous decrees.

b. Declaration of the Rule of Emergency

The amendment made with Law No. 6771 abolished Articles 119, 120, 121 and 122 of the Constitution, which regulate the extraordinary administration procedures. Under the amended Article 119,

> *In the event of war, the emergence of a situation necessitating war, mobilization, an uprising, strong rebellious actions against the motherland and the Republic, widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation, emergence of widespread acts of violence aimed at the destruction of the Constitutional order or of fundamental rights and freedoms, serious deterioration of public order because of acts of violence, occurrence of natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis; the President of the Republic may declare state of emergency in one region or nationwide for a period not exceeding six months.*

This decision is subject to the approval of the National Assembly. With the transition to an emergency rule, the President of the Republic acquires the power to issue law-amending decrees, as regulated in paragraphs 6 and 7 of the new Article 119:

> *In the event of state of emergency, the President of the Republic may issue presidential decrees on matters necessitated by the state of emergency, notwithstanding the limitations set forth in the second sentence of the seventeenth paragraph of the Article 104. Such decrees which have*

the force of law shall be published in the Official Gazette, and shall be submitted for approval to the Grand National Assembly of Turkey on the same day.

Except in the case of inability of the Grand National Assembly of Turkey to convene due to war or force majeure events, presidential decrees issued during the state of emergency shall be debated and decided in the Grand National Assembly of Turkey within three months. Otherwise, presidential decrees issued during the state of emergency shall be annulled automatically.

This provision permits the President to issue law-amending decrees only in cases necessitated by the emergency, thus implying that the provision is limited with respect to its subject matter. However, a similar provision existed in the abolished Article 121, but during the emergency rule from July 2016 to July 2018 this provision was not respected, suggesting that there is no such guarantee for the future.

Furthermore, paragraph 7 of Article 119 provides that the President's emergency rule law-amending decrees will automatically become null and void if they are not approved by the Assembly within three months. This provision speeds up the Assembly's supervision process. However, if the majority of the Assembly shares the same political tendency with the President, as is the case today, it may refrain from using this power, and the President can govern the country with such decrees issued every three months. Finally, these decrees are not subject to judicial review under Article 148 of the Constitution.

This provision permits the President to issue law-amending decrees only in cases necessitated by the emergency, thus implying that the provision is limited with respect to its subject matter.

c. Recognition of Reserve Domains for Regulation by the Executive

The Constitutional amendment of 2017 created areas that cannot be regulated by law, but only by presidential decrees. These are: the appointment and dismissal of high-level public functionaries and the regulation of principles regarding their appointments (amended Article 104, para. 9); the creation and abolition of ministries, their powers, duties and organizational structures, and establishment of their central and local organization (amended Article 106, last para.); the functioning of the State Supervisory Council, term of office of its members and other personnel matters (amended Article 108, last para.); and regulation of the organization and duties of the General Secretariat of the National Security Council (amended Article 118, para. 6). Thus, the legislative power was limited in favor of the executive.[31]

31 Serap Yazıcı, "2017 Anayasa Değişikliği: Türkiye'de Başkanlık Sistemine Geçiş", Prof. Nami Çağan Armağanı, Ankara Atılım Üniversitesi Yayınları, Ankara, 2020, p. 773-818.

2. The Presidential Government System Abolished Many Powers of the Legislature

The Presidential Government System made the executive the strongest actor in the state by abolishing or weakening certain powers of the legislature. This has weakened the system of checks and balances, and increased the potential for arbitrariness on the part of the executive.

a. It Gives the President of the Republic a Veto Power

The Constitutional amendment of 2017 gave the President of the Republic a veto power over laws adopted by the National Assembly with the change in Article 89.

Previously, this Article gave the President the power to sign the laws adopted by the Assembly for their entry into force. If he does not agree with such a law, he can return it to the Assembly only once for reconsideration. The Assembly could re-adopt the law with the absolute majority of the attending members, in which case the President was required to sign it.

The Presidential Government System made the executive the strongest actor in the state by abolishing or weakening certain powers of the legislature.

With the amendment the President's power to return for reconsideration was transformed into a veto power. In case of return the Assembly can re-adopt the law only with the absolute majority of its full membership.

b. The Presidential Government System Abolished the Oral Question Power of the Assembly

The original text of Article 98 of the Constitution of 1982 gave the deputies the power to direct oral and written questions to ministers. The amendment abolished oral questions. Under the original text, the Prime Minister or the ministers gave oral answers to such questions, and thus both the deputies and the general public would be informed of the issue.

The abolition of the power to ask oral questions increased arbitrariness in administration, since decision-makers feel comfortable given the ineffectiveness of parliamentary supervision.

Now deputies can direct only written questions to President's assistants and the ministers. Although such questions have to be answered in fifteen days at the latest under Article 98 of the Constitution, in practice this rule is not respected, and there is no sanction for this. In any case, written questions cannot be a satisfactory substitute for oral questions.

c. The Presidential Government System Abolished the Power of Interpellation

The new system abolished interpellation, which is one of the indispensable elements of parliamentary government. Through interpellation, the government becomes collectively accountable to the Assembly and the ministers individually accountable for their actions concerning their ministry. In both cases, a vote of confidence is taken at the end of the interpellation debates and if the majority votes for no-confidence, the government or the minister concerned loses office.

d. The Presidential Government System Makes Parliamentary Inquiries Nonfunctional

Parliamentary inquiry is an instrument of control establishing criminal responsibility of ministers for crimes connected with their duties. Under the abolished Article 100 of the Constitution, this process started with a proposal by one-tenth of the full membership of the Assembly (55 deputies). Upon this proposal, the plenary of the Assembly could form a commission of inquiry by the simple majority of the attending deputies. The report prepared by this commission was then presented to the plenary of the Assembly which could send the minister to the High Court with the absolute majority of its full membership (276 deputies). If the Prime Minister was sent to the High Court, the government was considered fallen, and if a minister was sent to the High Court, he would lose office.

The new system abolished interpellation, which is one of the indispensable elements of parliamentary government.

Even though the new system accepted parliamentary inquiry for the President of the Republic, Presidential Assistants and the ministers, it made it unworkable in practice. Thus, initiation of a parliamentary inquiry can be demanded by at least the absolute majority of the full membership of the Assembly (301 deputies). This proposal has to be adopted by at least three-fifths of the full membership (360 deputies) and the majority required to send to the High Court is two-thirds of the full membership (400 deputies). Persons sent to the High Court continue to remain in office. If they are sentenced by the High Court for a crime incompatible with membership in parliament, only then do they lose their position. Thus, the new system has made parliamentary inquiry unworkable in practice, contributing to arbitrariness in government, as shown in the case of the former minister of commerce Ruhsar Pekcan.

e. The Presidential Government System Weakened the Parliament's Control over the Budget

The new system weakened the legislature by abolishing its power to reject the budget bill. In all systems of government, the budget is prepared by the executive and adopted by the legislature, since the legislature is the representative of the nation.

In the new system, the budget is prepared by the executive and presented to parliament for adoption. But there is no sanction if parliament rejects it. In this case, a temporary budget is made and if this is not possible either, the last year's budget will be in force with reevaluations. Thus, the Assembly's power to reject the budget bill has become meaningless in practice.

3. The Presidential Government System Terminated the Independence of the Judiciary

Article 2 of the Constitution of 1982 refers to the rule of law. As a requirement of this principle, the Constitution regulates in its Article 9 that *"Judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation."* The Constitution regulates the security of tenure of judges, which is one of the important guarantees of the independence of the judiciary, in its Article 139. Furthermore, in Article 138 of the Constitution, titled "Independence of the Courts," the following provision is included:

The transition to the Presidential Government System worsened the problem of independence of the judiciary and created a judiciary dependent on the executive.

> *Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming to the law.*
>
> *No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.*
>
> *No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.*
>
> *Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.*

Finally, Article 159 of the Constitution regulated the High Council of Judges and Public Prosecutors empowered to decide on the personnel matters of judges and public prosecutors. Although this article gives at first sight the impression that the judiciary is independent, in reality it has never been fully materialized. The transition to the Presidential Government System worsened the problem and created a judiciary dependent on the executive. The amendment law added the word "impartial" to the adjective "independent" in Article 9. This has no practical meaning, however, since the word "independent" already covers impartiality.

The most critical point of the amendment law is the change in the structure of the High Council of Judges and Public Prosecutors. This Council is a body competent to decide on all personnel matters of judges and public prosecutors, such as appoint-

ment, dismissal, promotion and transfers. The structure of the Council has been a matter of debate since its establishment. A point of concern was the fact that the Minister of Justice was the Chairman of the Council, and the Deputy Minister of Justice its natural member. It was argued that this put the Council under the influence of government. Although the Constitutional Amendment of 2010 intended to give the Council a more pluralist composition, this was not realized since the Constitutional Court annulled certain provisions of the amendment law.

The Constitutional Amendment of 2017, on the other hand, put the Council under the control of the AKP-MHP alliance. Under the amended Article 159, the Council is composed of thirteen members. As previously, the Minister of Justice is its chairman, and the Deputy Minister of Justice its natural member. Six members are directly appointed by the President of the Republic. The remaining seven members are elected by the Grand National Assembly as follows: *"In the first voting the two-thirds majority of the full membership, if this is not obtained in the second voting three-fifth majority of the full membership is required. If a member is not elected in the second voting, there will be a lot-taking between the two highest vote getters."* Thus, the process ends up in the decision of the simple majority.

The Council was transformed into an apparatus executing the directives of the power block, rather than serving the interests of the rule of law.

As pointed out above, the transition to the Presidential Government System was realized by the alliance of the AKP and MHP. This solidarity, later named Cumhur Bloku (Republican Block), also worked in the election of seven members of the Council. As a result, the Council was transformed into an apparatus executing the directives of the power block, rather than serving the interests of the rule of law.

CONCLUSION

With the adoption of the Constitutional Amendment Law No. 6771, Turkey deserted its a century-and-a-half long tradition of parliamentary government. However, the adopted system is not a US-type presidential system either. In contrast to the US-style presidentialism which is based on strict separation of powers, it gives the President of the Republic large legislative, executive and judicial powers.

This change led the way to authoritarianization. It is no longer possible to define Turkey's political system as one of the sub-types of democracy, such as electoral democracy, semi-democracy or pseudo-democracy.[32] The most proper concept to

32 For explanations on the sub-types of democracy see Larry Diamond, Developing Democracy: Toward Consolidation, The Johns Hopkins University Press, Baltimore and London, 1999, p. 7-17.

define the present system of Turkey is competitive authoritarianism. In the words of Steven Levitsky and Lucan A. Way who developed this concept,

> *Competitive authoritarian regimes are civilian regimes in which formal democratic institutions exist and are widely viewed as the primary means of gaining power, but in which incumbents' abuse of the state places them at a significant advantage vis-à-vis their opponents. Such regimes are competitive in that opposition parties use democratic institutions to contest seriously for power, but they are not democratic because the playing field is heavily skewed in favor of incumbents. Competition is thus real but unfair.*[33]

Ergun Özbudun also thinks that the most appropriate concept to define the present Turkish political system is competitive authoritarianism. He argues that even though no doubt existed about the fairness of elections since the Constitution of 1961, in the last years the government control over the two high courts put the impartiality of the Supreme Board of Elections in doubt. It is obvious that competition for power between political parties is becoming increasingly unequal every day. Moreover, the government's attempt to create a dependent judiciary has succeeded. The government established control over the media, using political, economic and legal instruments. The State's Radio and Television Agency has become a propaganda instrument for the government. Finally, all mechanisms of horizontal accountability have lost their influence in recent years. For all these reasons, Ergun Özbudun argues that Turkey is a typical example of competitive authoritarianism.[34]

The government established control over the media, using political, economic and legal instruments.

Indeed, the incumbent AKP-MHP block which was influential in the presidential election, and maintained its alliance in legislative process in parliament, not only destroys the democratic dimension of constitutional order, but also systematically destroys the competitiveness dimension of the system. The amendment in the electoral laws adopted in April 6, 2022 is the latest step taken by the AKP-MHP block to limit electoral competition.[35] This law weakens the prospects of an opposition

33 Steven Levitsky and Lucan A. Way, Competitive Authoritarianism: Hybrid Regimes After the Cold War, Cambridge University Press, Cambridge, 2010, p. 5.

34 For detailed explanations see Ergun Özbudun, Anayasalcılık ve Demokrasi, Yetkin Yayınları, Ankara, 2019, p. 143-144.

35 For analyses on this law see Ergun Özbudun, "Seçim Kanunu Değişiklikleri ve Muhalefet", Perspektif.Online, 25 March 2022, https://www.perspektif.online/secim-kanunu-degisiklikleri-ve-muhalefet/, date of access: 18.04.2022; Seyfettin Gürsel, "Seçim Sisteminde Değişiklik: Amaçlar ve Hesaplar", T24, 16 March 2022, https://t24.com.tr/yazarlar/seyfettin-gursel/secim-sisteminde-degisiklik-amaclar-ve-hesaplar,34612, date of access: 18.04.2022; Tanju Tosun, "Seçim Kanununda Değişiklik Teklifi ve Milletvekili Dağılım Senaryoları", Politikyol.com, 16 March 2022, https://www.politikyol.com/secim-kanununda-degisiklik-teklifi-ve-milletvekili-dagilim-senaryolari/, date of access: 18.04.2022; Serap Yazıcı, "Cumhur Blokunun Seçim Mühendisliği Altılı Masayı Devirmeyi Amaçlıyor", Politikyol.com, 20 March 2022, https://www.politikyol.com/cumhur-blokunun-secim-muhendisligi-altili-masayi-devirmeyi-amacliyor/, date of access: 18.04.2022; Serap Yazıcı, "Seçim Mevzuatında Yapılan Değişiklikler Anayasaya Aykırıdır", Politikyol.com, 3 April 2022, https://www.politikyol.com/secim-mevzuatinda-yapilan-degisiklikler-anayasaya-aykiridir/, date of access: 18.04.2022.

victory in the next elections. However, if the democratic opposition block obtains a constitution-amending majority in this election, it will renew hopes for transition to democracy. The Republican People Party, Good Party, Democrat Party, Democracy and Progress Party, Future Party and Felicity Party all are committed to adopting strengthened democratic parliamentarism. If they are able to accomplish this mission, Turkey will able to reestablish the rule of law and democracy after a dark period.

BIBLIOGRAPHY

Books

Diamond, Larry. Developing Democracy: Toward Consolidation, The Johns Hopkins University Press, Baltimore and London, 1999.

Gözler, Kemal. Anayasa Hukukunun Genel Esasları, Ekin Yayınevi, Bursa, 2015.

Levitsky, Steven and Lucan A. Way. Competitive Authoritarianism: Hybrid Regimes After the Cold War, Cambridge University Press, 2010.

Özbudun, Ergun. Türk Anayasa Hukuku, 13. Baskı, Yetkin Yayınları, Ankara, 2012.

Özbudun, Ergun. Anayasalcılık ve Demokrasi, Yetkin Yayıncılık, Ankara, 2019.

Yazıcı, Serap. Demokratikleşme Sürecinde Türkiye, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2012.

Yazıcı, Serap. Yeni Bir Anayasa Hazırlığı ve Türkiye, Seçkincilikten Toplum Sözleşmesine, extended 3rd edition, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2016.

Yazıcı, Serap. Başkanlık ve Yarı-başkanlık Sistemleri: Türkiye İçin Bir Değerlendirme, 4th edition, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2017.

Book Chapters

Yazıcı, Serap. "Yeni Anayasa Çalışmaları ve Başkanlık Sistemi Tartışmaları", Türkiye'de Hukuku Yeniden Düşünmek, (ed.) Haluk İnanıcı, İletişim Yayınları, İstanbul, 2015.

Yazıcı, Serap. "Hukuk Devleti ve Yargının Bağımsızlığı", Türkiye'de Siyasal Yaşam: Dün, Bugün, Yarın, (ed.) Mehmet Kabasakal, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2016, p. 71, 85.

Yazıcı, Serap. "Olağanüstü Hal Kanun Hükmünde Kararnameleri: Kamu Görevinden İhraçlar ve Yol Açtıkları Hukuka Aykırılık Sorunları", Metin Günday Armağanı, Cilt 2, Atılım Üniversitesi Yayınları, Ankara, 2020, p. 1501-1555.

Yazıcı, Serap. "2017 Anayasa Değişikliği: Türkiye'de Başkanlık Sistemine Geçiş", Prof. Nami Çağan Armağanı, Ankara Atılım Üniversitesi Yayınları, Ankara, 2020, p. 773-818.

Articles

Gözler, Kemal. "Cumhurbaşkanlarının Seçimi: Karşılaştırmalı Anayasa Hukuku İncelemesi", *Terazi: Aylık Hukuk Dergisi,* Vol. 2, No. 9, May 2007, p. 19-29.

Gözler, Kemal. "Mühürsüz Oy Pusulası Tartışması: YSK'nın 16 Nisan 2017 Tarih ve 560 sayılı Kararı Hakkında Bir İnceleme", http://www.anayasa.gen.tr/muhursuz.html (Konuluş Tarihi: 19 April 2017), date of access: 18.04.2022.

Gözler, Kemal. "Cumhurbaşkanlığı Sistemi mi, Başkanlık Sistemi mi, Yoksa *Neverland* Sistemi mi? 16 Nisan'da Neyi Oylayacağız?", http://www.anayasa.gen.tr/neverland.htm (Konuluş Tarihi: 24 February 2017), date of access: 18.04.2022.

Gözler, Kemal. "15 Temmuz Kararnameleri: Olağanüstü Hal Kanun Hükmünde Kararnamelerin Hukukî Rejiminin İfsadı Hakkında Bir İnceleme", Ankara Barosu Dergisi, 2017/1, p. 47.

Gözler, Kemal. "16 Nisan'da Oylayacağımız Anayasa Değişikliği Bir 'Suistimalci Anayasa Değişikliği' midir?", http://www.anayasa.gen.tr/suistimalci.htm (Konuluş Tarihi: 1 March 2017).

Gürsel, Seyfettin. "Seçim Sisteminde Değişiklik: Amaçlar ve Hesaplar", T24, 16 March 2022,

https://t24.com.tr/yazarlar/seyfettin-gursel/secim-sisteminde-degisiklik-amaclar-ve-hesaplar,34612

Landau, David. "Abusive Constitutionalism", *University of California Davis Law Review*, Vol 47, No. 1, 2013, p. 189-260, http://lawreview.law.ucdavis. edu/issues/47/1/Articles/47-1_Landau.pdf

Özbudun, Ergun. "Seçim Kanunu Değişiklikleri ve Muhalefet", Perspektif.Online, 25 March 2022, https://www.perspektif.online/secim-kanunu-degisiklikleri-ve-muhalefet/

Tosun, Tanju. "Seçim Kanununda Değişiklik Teklifi ve Milletvekili Dağılım Senaryoları", Politikyol.com, 16 March 2022, https://www.politikyol.com/secim-kanununda-degisiklik-teklifi-ve-milletvekili-dagilim-senaryolari/

Yazıcı, Serap. "Turkey in the Last Two Decades: From Democratization to Authoritarianism", European Public Law, Vol. 21, No. 4, December 2015, p. 653-655.

Yazıcı, Serap. "Cumhur Blokunun Seçim Mühendisliği Altılı Masayı Devirmeyi Amaçlıyor", Politikyol.com, 20 March 2022, https://www.politikyol.com/cumhur-blokunun-secim-muhendisligi-altili-masayi-devirmeyi-amacliyor/

Yazıcı, Serap. "Seçim Mevzuatında Yapılan Değişiklikler Anayasaya Aykırıdır", Politikyol.com, 3 April 2022, https://www.politikyol.com/secim-mevzuatinda-yapilan-degisiklikler-anayasaya-aykiridir/

News Articles

Kanadoğlu, Sabih. "AKP Tek Başına Seçemez", Cumhuriyet Gazetesi, 26 December 2006.

"AKP'nin Tercihi Davutoğlu", BBC News Türkçe, 21.08.2014, date of access: 05.04.2022, https://www.bbc.com/turkce/haberler/2014/08/140821_yeni_basbakan

"Erdoğan'dan Başçı'ya: Başka Yere Bağımlılığın mı Var?", Cumhuriyet Gazetesi, 25.02.2015, date of access: 04.04.2022, https://www.cumhuriyet.com.tr/haber/erdogandan-basciya-baska-yere-bagimliligin-mi-var-221538

"Hakan Fidan Aday Oluyor", Sözcü Gazetesi, 07.02.2015, date of access: 04.04.2022, https://www.sozcu.com.tr/2015/gundem/hakan-fidan-aday-oluyor-735641/

"Erdoğan: Fidan'ın Adaylığına Olumlu Bakmıyorum", Aljazeera Turk, 08.02.2015, date of access: 04.04.2022, http://www.aljazeera.com.tr/haber/erdogan-fidanin-adayligina-olumlu-bakmiyorum

Bila, Fikret. "Fidan 'Sır Küpüm'", Milliyet Gazetesi, 10.02.2015, date of access: 04.04.2022, https://www.milliyet.com.tr/yazarlar/fikret-bila/fidan-sir-kupum-2011269

"Hakan Fidan Milletvekilliği Adaylığını Geri Çekti", BBC News Türkçe, 09.03.2015, date of access: 04.04.2022, https://www.bbc.com/turkce/haberler/2015/03/150309_hakanfidan_adayliktan_cekildi

"Erdoğan'dan İzleme Heyeti Çıkışı: Gazetelerden Öğreniyorum, Olumlu Bakmıyorum", sendika.org, 20.03.2015, date of access: 04.04.2022, http://www.sendika.org/2015/03/erdogandan-izleme-heyeti-cikisi-gazetelerden-ogreniyorum-olumlu-bakmiyorum/

"Erdoğan: Ben Konu Mankeni Değilim", cnnturk.com, 21.03.2015, date of access: 04.04.2022, http://www.cnnturk.com/haber/turkiye/erdogan-ben-konu-mankeni-degilim

"10 Ağustos'ta Cumhurbaşkanı'nı Halkın Seçmesiyle Bir Dönem Sona Ermiştir", Sabah Gazetesi, 22.03.2015, date of access: 04.04.2022, http://www.sabah.com.tr/gundem/2015/03/22/10-agustosta-cumhurbaskanini-halkin-secmesiyle-bir-donem-sona-ermistir

"Bahçeli'den Başkanlık Sistemi Çıkışı", NTV, 11 October 2016, date of access: 04.04.2022, https://www.ntv.com.tr/turkiye/bahceliden-baskanlik-sistemi-cikisi,c1WeUw7SfUaRhJHd_4gJAQ

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The Centre for Applied Turkey Studies (CATS) at the German Institute for International and Security Affairs (SWP) in Berlin is funded by Stiftung Mercator and the Federal Foreign Office. CATS is the curator of CATS Network, an international network of think tanks and research institutions working on Turkey. This publication was produced as part of the project "Turkey's Search for a New Political System" which is a project of CATS Network.

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TURKEY'S SEARCH FOR A NEW POLITICAL SYSTEM

02

THE PRESIDENTIAL GOVERNMENT SYSTEM

EXPERIENCE IN TURKEY

The system debate is arguably the most pressing and consequential subject of Turkish politics. Turkey has been having a governmental system discussion for a period of time, and the next few years will appear to be in intense debate and search.

Turkish parliamentary system experience (1876-2017) often dealt with interruptions. As a result, it has not only failed to produce general satisfaction in politics and society but also has been unsuccessful in yielding economic stability. Similarly, the outcome of the last five years of the Presidential Government System (or the Presidential System with its widespread use) could not generate stability.

The search and discussion of the governmental system appear to be the most critical topic of politics for the next few years. Regardless of the outcome of the June 2023 elections, the system debate will be the most crucial topic of politics in the short term.

Meeting this demand and preparing enhanced research on the governmental system will play an essential role in the quest for a possible change.

Comprehensive research should present a comparative, global, political, and constitutional base for the debates and assist decision makers in political parties and the public in finding an enriched discussion floor.

Within the framework of this program, Ankara Institute plan to publish ten academic analyzes that will contribute to the search for systems over the next year in order to meet this end.

The research plans to conduct two workshops with the participation of stakeholders that we predict will contribute to the system discussion and hold a detailed public opinion survey.

This study in which Serap Yazıcı evaluates Turkey's experience in the Presidential Government System constitutes the second publication of the academic contribution of 10 reports.