TURKEY'S SEARCH FOR A NEW POLITICAL SYSTEM

07

NOVEMBER'22
ANKARA

EXECUTIVE BRANCH IN TURKEY: ISSUES AND SOLUTIONS

SEVTAP YOKUŞ

ANKARA INSTITUTE

CATS NETWORK Centre for Applied Turkey Studies

CONTENTS

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 Sevtap Yokuş evaluates the executive branch constitutes the seventh report of the academic contribution series that made out of 10 reports.

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 Institute, Director

INTRODUCTION

Despite all the amendments made to the 1982 Constitution in favor of freedoms, and even accounting for the freedoms that prevail in the Constitution as a whole, the weight and authority of the hyper-powered executive (especially in comparison to the other powers) did not change. By increasing the political power of the President within the executive, authority was consolidated; finally, the parliamentary system was abandoned, and the already weak balance of powers was completely eliminated.

In implementation of the parliamentary system, it is clear that the powers of the President within the executive should be kept symbolic. Even though a parliamentary regime was in place before the 2017 Constitutional amendments which ushered in the presidential system of government, the Constitution gave the President extensive powers and allowed him to use these powers on his own, immune from judicial review. The weight given to the authority under the Constitution has become particularly visible in light of the excessive power it provides to the executive in general, and the President in particular. In the presidential system of government, the entire executive power is concentrated in the person of the President. This situation, combined with other factors related to the political rule, has contributed to the personalization of political rule.

Within the scope of this study, discussions regarding the executive power in Turkey, and the government system in this context, are evaluated. The study spotlights how debates on the executive power, the presidential system of government, proposals for a strengthened parliamentary system, and a government system based on executive power, from past to present, must also address the indispensable elements of a democracy.

I. THE EVOLUTION OF EXECUTIVE POWER DURING THE PERIOD OF THE 1982 CONSTITUTION

An understanding that limited individual rights and freedoms, and that privileged the protection of the state and its authority, was reflected throughout the entire Constitution that emerged at the end of the coup process.

True to the general spirit of all coup constitutions, the 1982 Constitution was formulated in reaction to the period which preceded it. In continuity with a period which started with the Military Memorandum of 1971, and which tended to strengthen the executive power, a content based on authority was envisaged. An understanding that limited individual rights and freedoms, and that privileged the protection of the state and its authority, was reflected throughout the entire Constitution that emerged at the end of the coup process. The strong tendency towards protection of the state, and the importance accorded to authority, led to an emphasis on the executive among the various state organs, and resulted in the strengthening of the executive body against the other state organs. This outcome has become much more definite and evident following the adoption of election of the President by the public as an electoral method in the 2007 Constitutional amendment, and the presidential system of government in the 2017 Constitutional amendment.

A. The Strong Executive Envisioned by the 1982 Constitution as a Reaction to the 1961 Constitution Period

On the day of the military coup, September 12, 1980, the Chairman of the National Security Council Kenan Evren emphasized in his speech that the defense of the state and the nation had been abandoned prior to their seizing of power, and that there was need for a new constitutional arrangement which prioritized the defense of the state and the nation. This speech gained constitutional import following the implementation Law on the Constitutional Order. A constitution diametrically opposed to the 1961 Constitution was envisioned.[1] When we compare the 1982 Constitution with

1 Cem Eroğul, **Anatüzeye Giriş,** 6. Bası, İmaj Yayınları., Ankara 2000, s.302, 313.

the 1961 Constitution in terms of the balance of power, the strengthening of the executive branch in the 1982 Constitution is most clearly indicated by the "new status of the President, who now had a central position in the functioning of the institutions." In addition to the broad constitutional powers granted to the President regarding the legislative, judicial and executive areas, he also had considerable powers in times of emergency. Just like the actions taken by the President himself, the decree laws issued by the Council of Ministers convening under the chairmanship of the President during a state of emergency were also excluded from judicial review. The Council of Ministers, on the other hand, "had all the political and administrative instruments the country needs to determine and implement its national policy" in the ordinary period. No previous constitution in Turkey had increased the powers of the executive to this extent.[2]

The government system that was in place during the period of the 1961 Constitution can be defined as a classical parliamentary system limited by a strong judicial review. An impartial President, representing the continuity of the state, and a Council of Ministers, which bears political responsibility and is collectively responsible to the National Assembly, constituted the executive power. The irresponsibility of the President is also regulated according to the characteristics of the classical parliamentary system. Through these regulations, it was envisaged that the President would not be held responsible for matters related to his duties and that all his decisions would be signed by the Prime Minister and the relevant ministers. In practice, the presidents did not need other signatures in actions such as sending laws back to the parliament for reconsideration, or appointing members to the presidential quota in the Senate of the Republic. Similarly, the rule of countersignature was not observed in the annulment lawsuits filed by the President at the Constitutional Court in order to eliminate the unconstitutionality of the laws.[3] Due to the nature of these actions, the President's independent behavior was considered normal in this context, and there were no discussions on the extent of the President's powers.

The government system that was in place during the period of the 1961 Constitution can be defined as a classical parliamentary system limited by a strong judicial review.

The 1961 Constitution gave a higher legal power to legislative acts than to those of the executive, and during the 1961 Constitution period the actions of the executive remained secondary in importance. However, the authority to issue decree laws granted to the Council of Ministers by the 1971 Constitutional amendments caused a deviation in this regard. The fact that the Council of Ministers was given the authority to make changes in laws through decree laws, even within the limits specified in the Constitution, caused the 1961 Constitution to move away from its "legalistic" character.[4]

2 İbrahim Ö. Kaboğlu, "Türkiye'de Anayasal Reformlar Üzerine", **Anayasa Reformları ve Avrupa Anayasası,** Türkiye Barolar Birliği İnsan Hakları Uygulama ve Araştırma Merkezi, Ankara 2002, s.58,59.

3 Mümtaz Soysal, **100 Soruda Anayasanın Anlamı,** 8. Baskı, Gerçek Yayınları., İstanbul 1990, s.284,95,96.

4 Ergun Özbudun, **Türk Anayasa Hukuku,** 17. Basım, Yetkin Yayınları., Ankara 2017, s. 215.

The 1971 Constitutional amendments included the essential tendencies of limiting rights and freedoms, strengthening the executive among the political decision-making bodies, relaxing the judicial review against the political decision-making bodies, and the relative decline of the legislature. Since the fundamental objection against the 1961 Constitution was that it had weakened the executive, the essence of the 1971 Constitutional amendments focused on remedying this point. The executive was directly strengthened by changes which intended to protect the executive against the legislature, such as limiting the parliament's power of censure and the way in which this authority was exercised, and indirectly by the changes that reduced or eliminated the autonomy of autonomous organizations.[5]

An effort was made to strengthen the executive with the 1971 Constitutional amendments, and it became the strongest among all the bodies under the 1982 Constitution. According to Article 8 of the 1982 Constitution, titled "Executive power and function," "Executive power and function are exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the laws." The executive, which had been described only as a "function" in the 1961 Constitution, became a "power" as well as a "function" in the 1982 Constitution. At the same time, the Constitutional Court does not observe a significant difference between the 1961 and 1982 Constitutions in terms of legislative and executive relations. According to the Constitutional Court, "The Legislator will set the necessary rules on certain issues, draw the framework, and if he deems it fitting or necessary, he will leave defined areas for their implementation; the administration shall make certain rules in order to facilitate the implementation of the law within those areas, relying on its discretion, and in compliance with the already existing laws."[6] According to the Court, after setting the framework by making rules on specific issues, the legislator, if he deems it "fitting" and "necessary," may leave to the executive the implementation of the rule within the area it set for the occasion. The executive shall be able to use its discretion within the specified area, and provided that it is not against the law. Regulatory actions taken by the executive by using its discretion are for the purpose of ensuring the implementation of the law. The Constitutional Court upholds the principle of non-transferability of legislative power in its decisions on the subject.[7] According to the Constitutional Court, legislation is of an essential and general nature; the executive, on the other hand, is a derivative and dependent power.[8]

An effort was made to strengthen the executive with the 1971 Constitutional amendments, and it became the strongest among all the bodies under the 1982 Constitution.

5 Bülent Tanör, **İki Anayasa 1961-1982,** Beta Yayınları, İstanbul 1986, s.56,57.

6 Anayasa Mahkemesi, Esas:1985/3, Karar:1985/8, Karar Tarihi:18.6.1985, **AYMKD,** Sayı:21, s.204.

7 Turan Yıldırım, "Anayasa Mahkemesi Kararlarında Yürütme Organı", **Hukuk Araştırmaları,** Marmara Üniversitesi Hukuk Fakültesi Yayınları., Cilt:1, Sayı:3, Eylül-Aralık 1986, s.36.

8 Lütfi Duran, "Anayasa Mahkemesine Göre Türkiye'nin Hukuk Düzeni (1)", **Amme İdaresi Dergisi,** Cilt:19, Sayı:1, Mart 1986, s.14.

The 1982 Constitution, which empowered the executive power over the legislature, also further empowered the President by expanding his powers within the executive. The Constitution also increased the power of the Prime Minister in the government. In terms of the government system, the regime envisaged by the 1982 Constitution in its first form before the amendments is a "rationalized" parliamentary regime, which aimed for stability in the executive. It has been argued that the 1982 Constitution, with its arrangements towards stability, aimed to make the parliamentary regime functional.[9] Different definitions have emerged in terms of the parliamentary regime set forth by the 1982 Constitution. Some have called the system a "rationalized presidential parliamentary system," due to the establishment of a dual power structure based on the powers conferred on the President by the Constitution. It has been said that the system became almost a semi-presidential regime with the powers granted to the President, and even that the system established by the Constitution is a "faulty presidential government."[10]

We must approach the strength of the executive from two directions. The first of these is related to the position of the executive vis-à-vis the legislature and the judiciary. The second is the effect of the executive on civil society and individuals. While the first was determined by constitutional regulations, the second mostly emerged in the context of legal and administrative regulations and decisions. In order to reveal the true nature of the executive, it is necessary to examine the positions of state organs and functions in Turkey as they relate to one another. With the 1982 Constitution, a fundamental transformation took place in the ownership and use of power, the basis of which was determined by the Constitution.[11]

With the 1982 Constitution, a fundamental transformation took place in the ownership and use of power, the basis of which was determined by the Constitution.

There are certain focal points that highlight the executive. The regulations in the 1982 Constitution, which aimed to ensure that the legislature functioned swiftly, corresponded to the tendency to empower the executive. Even though regulations such as cutting down on the law-making process by returning to the unicameral system, increasing the election period to five years, enabling the governments to serve for longer periods, increasing the amount of group-forming in the Assembly, preventing the Assembly from being used in order to obstruct the functioning of the government, and reducing the meeting quorum all seem to be legislative in nature, these regulations actually highlight and foreground the executive.[12] Unlike the 1961 Constitution, the executive was defined as a power as well as a function, which aimed to empower the executive.[13] In

9 Necmi Yüzbaşıoğlu, "Cumhuriyetin 75 Yılının Devletin Ana Kuruluşu Yönünden Değerlendirilmesi", **Cumhuriyet'in 75. Yıl Armağanı,** İstanbul Üniversitesi, İstanbul 1999, s.256.

10 Ersel Aldabak, "57. Hükümet Dönemindeki Bazı Gelişmeler Işığında 1982 Anayasasında Cumhurbaşkanı", **İstanbul Üniversitesi Hukuk Fakültesi Mecmuası,** Cilt:LX, Sayı:1-2, Yıl:2002, s.4.

11 Lütfi Duran, **Türkiye Yönetiminde Karmaşa,** Çağdaş Yayınları., İstanbul 1988, s.48-50.

12 Yavuz Sabuncu, **Anayasaya Giriş,** 8.Bası, İmaj Yayınları., Ankara 2002, s.204.

13 Mehmet Turhan, **Hükümet Sistemleri ve 1982 Anayasası,** Dicle Üniversitesi Hukuk Fakültesi Yayınları, Diyarbakır 1989, s.95.

the justification of Article 8 of the Constitution, which states that the executive is also a power, it is said: "...in modern life, the executive power is the brain of the state, the engine from which the motive power originates. This is why some governments lacked the power to make decisions in the period from 1961 to 1980. In order to put an end to this situation, the executive was made no longer subservient to the legislative body, and the parliamentary government system, which envisaged the cooperation of both powers in the regulation of State activities in an equal and equitable manner, was put into practice with all its requirements. For this reason, the executive was no longer a duty as it was in the 1961 Constitution, and the executive was organized as a force with the required powers, fulfilling the duties assigned to it by the law."[14]

There are also provisions in the 1982 Constitution which aim to directly empower the executive. For example, according to the second paragraph of Article 167: "In order to regulate foreign trade for the benefit of the country's economy, the Council of Ministers[15] may be empowered by law to introduce additional financial impositions on imports, exports and other foreign trade transactions in addition taxes and similar impositions, or to lift them." This provision aimed to directly empower the executive.[16]

During the period of the 1982 Constitution, the authority to issue decree laws constituted another aspect of the empowerment of the executive against the legislature.

During the period of the 1982 Constitution, the authority to issue decree laws constituted another aspect of the empowerment of the executive against the legislature. At the same time, the inadequacy of the political and legal supervision of decree laws led to an expansion in the regulation capabilities of the executive.[17] While the 1982 Constitution gave the Council of Ministers the power to issue decree laws, unlike the 1961 Constitution it did not include the principle that the authority to issue decrees having the force of law could only be granted in "specific matters" cited in Article 91, which specifically regulated decree laws. The clause in Article 87, "Giving the Council of Ministers the authority to issue decrees having the force of law on certain issues," could not completely eliminate this deficiency in Article 91. This shortcoming has been evaluated as a tendency to broaden the power of decree laws. Again unlike the 1961 Constitution, the 1982 Constitution also abolished the obligation of "clearly indicating the legal provisions to be repealed" with the decree to be issued.[18] For these reasons, the 1982 Constitution enlarged the executive's field of action through decrees having the force of law. Unlike the 1961 Constitution, with the regulations

14 Mehmet Akad-Abdullah Dinçkol, **1982 Anayasası Madde Gerekçeleri ve Maddelerle İlgili Anayasa Mahkemesi Kararları,** Alkım Yayınları., İstanbul 1998, s.31,32.

15 Within the scope of the 2017 Constitutional amendments, the expression "the Council of Ministers" was changed to "President."

16 Necmi Yüzbaşıoğlu, **Türkiye'de Kanun Hükmünde Kararnameler Rejimi,** Beta Yayınları, İstanbul 1996, s.37.

17 Bakır Çağlar, "İktidar Yapısında "82 Formülü" ve Karşı-Tezler", **İdare Hukuku ve İlimleri Dergisi (Prof. Dr. Lütfi Duran'a Armağan),** Sayı:1-3, Yıl:9, 1988, s.60.

18 Yüzbaşıoğlu**, Türkiye'de Kanun Hükmünde Kararnameler Rejimi,**...,s.50.

envisaged by the 1982 Constitution, the Council of Ministers had the opportunity to make regulations on issues that were not previously regulated by law.

When the effect of the passive stance of the legislative majority (itself dependent on the executive) in this regard is considered in conjunction with the empowerment of the executive by decree laws, we observe that the result of this combination is an increase in problems on legislative checks and balances, as regards the practice of decree laws. The legislature has often been generous to the Council of Ministers in bestowing power, and negligent in the issue of oversight.[19]

In the 1982 Constitution, the executive was empowered to the disadvantage of the judiciary. On the one hand it became independent of the legislature; on the other hand, there was a desire to free it from the limiting influence of the judiciary while remaining within the bounds of the principle of a state of law.[20] The most prominent example of this approach is executive proceedings, which are exempted from judicial review in accordance with the Constitution.

B. The Decisive Role of the Executive in State of Emergency Governance

The 1982 Constitution raised the executive to the position of a first-degree authorized organ as a result of the regulations it contained in terms of state of emergency governance, and by and large, it bypassed the legislative and judicial powers. Constitutional arrangements to this end were supported and reinforced by laws and decrees having the force of law. Practice made it very clear that the executive organ was equipped with excessive powers under a state of emergency.

The legislature has often been generous to the Council of Ministers in bestowing power, and negligent in the issue of oversight.

In Article 119 of the Constitution, the situations in which a state of emergency can be declared are envisaged, as well as the procedures for announcement and the obligations and measures to be applied in such cases. In the situation existing before the 2017 Constitutional amendments, the administrative procedures were to be regulated by enactment of the Law on the State of Emergency, and by the Law on Martial Law in case of martial law.[21] Within the scope of these articles, the executive was authorized to declare a state of emergency or martial law, and the reasons requiring this declaration were delimited. In case of realization of the reasons determined for the state of emergency, "...The Council of Ministers convening under the chairmanship of the President may declare a state of emergency in one or more regions of the

19 Turgut Tan, "Türk Hukukunda Kanun Hükmünde Kararname Uygulaması ve Sorunlar", **Prof. Dr. Latif Çakıcı'ya Armağan,** Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, Cilt:50, No:1-2, Ocak-Haziran 1995, s.353.

20 Muzaffer Sencer, "1961 Anayasasından 1982 Anayasasına", **İnsan Hakları Yıllığı,** Cilt:5-6, 1983-1984, s.31.

21 Within the scope of the 2017 Constitutional amendments, "martial law" was removed from the extraordinary forms of government.

country or in the whole country, the duration of which shall not exceed six months, after taking into consideration the opinion of the National Security Council." The same procedure was envisaged for martial law in case of realization of martial law conditions. With the 2017 Constitutional amendment, the provisions regarding martial law were eliminated, but the provisions regarding the state of emergency administration remained the same. In the continuation of these provisions, the state of emergency decision is "published in the Official Gazette and immediately submitted to the approval of the Grand National Assembly of Turkey" and "the martial law decision is immediately published in the Official Gazette and submitted to the approval of the Turkish Grand National Assembly on the same day."

Again prior to the 2017 Constitutional amendment, parallel to the content of Article 120, the following provision was included in the first paragraph of Article 122 of the 1982 Constitution, "... The Council of Ministers, convening under the chairmanship of the President, after taking into consideration the opinion of the National Security Council, may declare martial law in one or more regions of the country or in the whole country, the duration of which shall not exceed six months ..." With this provision, unlike the provision in Article 124 of the 1961 Constitution which regulates the same issue, the National Security Council and the President were brought into the matter. In addition, the period during which martial law could be implemented was extended, thus preventing the issue from being discussed more frequently in the Turkish Grand National Assembly.[22] In contrast to the 1961 Constitution, this amendment to the 1982 Constitution aimed at giving the executive a more central role.

During the period of the 1982 Constitution, under state of emergency conditions the executive branch largely bypassed the legislative and judicial organs and had sole use of its powers.

During the period of the 1982 Constitution, under state of emergency conditions the executive branch largely bypassed the legislative and judicial organs and had sole use of its powers. The State of Emergency Law, which was exempted from judicial review by provisional article 15 (which was later repealed in 2001), as well as the emergency decree laws, were implemented even though their provisions were contrary to the law and even the Constitution in effect. The practices of the executive under the state of emergency regime, beyond the temporary suspension of rights and freedoms, led to an unlawful regime, resulting in serious human rights violations.

In the 1982 Constitution, the regulations governing state of emergency administration were kept completely distinct from the ordinary period. This distinction also applied to decree laws. In the period before the 2017 Constitutional amendments, emergency decree laws occupied an area outside Article 91 of the Constitution, which regulated

22 Zafer Üskül, **Siyaset ve Asker,** Afa Yayınları, İstanbul 1990, s.19.

decree laws.[23] Article 91 of the Constitution did not extend to emergency decree laws its standard criterion that the field of fundamental rights and freedoms and political rights and freedoms cannot be regulated by decree laws. Thus, at the constitutional level, emergency decree laws created a space for firsthand regulation by the executive.[24] The fifth paragraph of Article 91 which (before the 2017 Constitutional amendments) stated, "The provisions regarding the issuance of a decree having the force of law by the Council of Ministers convened under the chairmanship of the Presidency in times of martial law and emergency are reserved," demonstrates that the condition of an enabling law is not sought for emergency decree laws, opening up space for the executive to act decisively. The same is true for the decree laws that the President himself may issue in a state of emergency, following the 2017 Constitutional amendments.

Legislative or judicial review of emergency decree laws was rendered impossible. Paragraph 3 of Article 121 of the Constitution, which describes the way in which these decrees are issued, states: "During a state of emergency, the Council of Ministers convening under the chairmanship of the President may issue decrees having the force of law on matters necessitated by the state of emergency. These decrees are published in the Official Gazette and submitted to the Turkish Grand National Assembly for approval on the same day; the timeframe and procedure for their approval by the Assembly is determined in the Bylaws." The Turkish Grand National Assembly passed the Bylaws provision, which is a requirement of this provision, fourteen years after the emergency decree laws themselves were created and put into practice. Although Article 128 of the Bylaws determines the procedure for discussing these decrees in the Parliament, the regulation it envisaged was not sufficient for the legislative review of the emergency decree laws in practice, due to the lack of sanctions.[25] As a result, the emergency decree laws, which are susceptible to a variety of unlawful practices, were free of legislative control for many years.

Legislative or judicial review of emergency decree laws was rendered impossible. The obstacle to the judicial review of emergency decree laws is a direct provision of the Constitution.

The obstacle to the judicial review of emergency decree laws is a direct provision of the Constitution. According to the first paragraph of Article 148 of the Constitution; "...no case can be brought before the Constitutional Court on the allegation that the presidential decrees issued in times of emergency and war are unconstitutional in terms of form and substance." Combined with the absence of supervision mentioned above, the executive branch was the sole decisive power in the state of emergency administration when emergency decrees were implemented. The state of emergency administration created a space for the executive branch to employ its powers almost unchecked, using the power it derived directly from the Constitution.

23 Fazıl Sağlam, "KHK Çıkarma Yetkisinin Sınırları Uygulamanın Yaygınlaşmasından Doğabilecek Sorunlar", **Anayasa Yargısı,** Sayı:1, Anakara 1984, s.262.

24 Yüzbaşıoğlu, **Türkiye'de Kanun Hükmünde Kararnameler Rejimi,** s.176.

25 Yüzbaşıoğlu, **Türkiye'de Kanun Hükmünde Kararnameler Rejimi,** s.186,187.

II. THE EXECUTIVE AND THE GOVERNMENTAL SYSTEM, IN TRANSFORMATION WITH REGARD TO POSITION OF THE PRESIDENT

The symbolic position of the President determined by the 1961 Constitution was changed in the 1982 Constitution. One of the main features of the parliamentary system is a head of state or president with symbolic powers.

A. The President's Position Prior to the 2017 Constitutional Amendments

The symbolic position of the President determined by the 1961 Constitution was changed in the 1982 Constitution. One of the main features of the parliamentary system is a head of state or president with symbolic powers. For this reason, the empowerment of the President did not comply with the characteristics of the parliamentary regime. When the organization of the state as laid out in the 1982 Constitution is examined, we observe that the executive branch in general is strengthened, and in particular the powers of the President within it. Indeed, one of the most important aspects of the criticism directed at the 1982 Constitution concerned the powers granted to the President. It was debated even during the drafting of the Constitution that changes aimed at strengthening the position of the President would be unsuitable to the history and requirements of Turkey's governmental system, and that such changes should therefore be avoided.[26]

Since the quite extensive powers granted to the President are in the legislative, executive and judicial areas, they also symbolize a kind of power in which all three branches are unified. Until the 2017 Constitutional amendments, no judicial action could be taken against the decisions signed ex officio by the President, in accordance with the Constitution. In a state of emergency, this accumulation of power became much more evident.

26 Cem Eroğul, "Cumhurbaşkanının Denetim İşlevi", **Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi,** Cilt:XXXIII, No:1-2, Mart-Haziran 1978, s.52,53.

In terms of form as well, the powers granted to the President were different from those in the constitutions which preceded the 1982 Constitution. While the powers granted to the President in previous constitutions were envisaged separately in various articles, they were listed together under a single article in the 1982 Constitution. The purpose of choosing this form, it has been argued, was the idea that it would provide a clear view of the extensive powers of the President, and create a psychological effect based on the power he had thereby acquired.[27]

The principle of parallelism of authority and responsibility, a fundamental principle of public law, is realized through the countersignature rule in parliamentary systems. Accordingly, all acts of the head of state, who does not himself hold political responsibility, must be signed by the Prime Minister or minister responsible to the parliament. Through application of this rule, the powers of the irresponsible head of state are made symbolic. While this rule is applied absolutely in parliamentary monarchies, in some republics, the President is provided with the opportunity to exercise exceptional powers that do not require political responsibility. In Turkey, with the 1961 Constitution, the rule of countersignature was determined absolutely. The 1982 Constitution, as it was before the 2017 Constitutional amendments, went through a complex arrangement in this regard. In the first paragraph of Article 105 of the Constitution, where it is stated that "All presidential decrees, except those which the President of the Republic is empowered to enact individually without the signatures of the Prime Minister and the minister concerned in accordance with the provisions of the Constitution and other laws, shall be signed by the Prime Minister and the ministers concerned; the Prime Minister and the minister concerned shall be accountable for these decrees," the rule of countersignature, a requirement in the parliamentary system, was covered. However, the provision which immediately followed, namely, "No appeal shall be made to any judicial authority, including the Constitutional Court, against the decisions and orders signed by the President of the Republic on his/her own initiative," caused confusion. This was because Article 104, after having specified the powers and functions granted to the President in the legislative, executive and judicial areas in an extensive list, failed to note which among these could be used individually.[28]

The principle of parallelism of authority and responsibility, a fundamental principle of public law, is realized through the countersignature rule in parliamentary systems.

As regards doctrine, the prevailing opinion is that the question of which of the powers granted to the President are to be determined by complying with the rule of countersignature, and which are to be used individually, may be settled by looking at the quality of that power. Accordingly, the actions of the President arising from his title as head of state are those that are not subject to judicial review, and can be performed

27 Soysal, 100 Soruda..., s.318,319.

28 Bülent Tanör-Necmi Yüzbaşıoğlu, **Türk Anayasa Hukuku,** 19. Bası, Beta Yayınları, İstanbul 2019, s.350, 351.

individually.[29] According to another opinion, in countries where a parliamentary regime is in place, the power of the heads of state to even send back the laws to the parliament must be exercised by the Prime Minister and the relevant ministers. This is because the sole exercise of such power by the President may cause a conflict between the Assembly and the President, as well as friction between the Council of Ministers and the President. If the Assembly accepts its own drafted bills as they are, without making any changes in line with the President's recommendations after the President has exercised his authority to send back, and if the practice continues in this direction, the President may suffer a loss of political credibility.[30] As a result, based on the requirements of the parliamentary system, the predominant opinion was that the President should not exercise his powers individually.[31] The interpretation of the Constitutional Court was in the same direction. In its decision on the Law on Judges and Prosecutors, the Court assessed the issue as follows:

Based on the requirements of the parliamentary system, the predominant opinion was that the President should not exercise his powers individually.

According to the Constitution, in which a parliamentary government system is adopted, the decrees to be signed by the President as the head of the executive, pursuant to the countersignature rule, should be understood as being limited to the duties and powers of the executive branch in accordance with Article 104. The rule in the Constitution which states, 'All decisions of the President... are signed by the Prime Minister and the relevant ministers,' should only be interpreted in terms of decisions that are executive and require the political responsibility of the Council of Ministers. Otherwise, it is incompatible with the logic of the parliamentary system for there to be no authority that can be held politically responsible for the actions and operations of individuals and organizations in the executive field and exercising executive powers. For this reason, the rule of countersignature is valid for appointments in the executive branch... However, in Article 104 of the Constitution, the President is given the power to appoint several members of the Supreme Courts and the Supreme Council of Judges and Prosecutors, not as the head of the executive but because he is the head of the State. There is no room for doubt and hesitation that these are among the powers that can be exercised by the President individually.[32]

Discussions on the position of the President prior to the 2017 Constitutional amendments and the presidential government system first gained momentum with the 2007 Constitutional amendments. With the adoption of the method of election of the President by the people, the view that the governmental system in Turkey had changed be-

29 Özbudun, Türk Anayasa Hukuku,... s.316.

30 Erdoğan Teziç, "Cumhurbaşkanının Geri Gönderme Yetkisi", **Anayasa Yargısı,** Sayı:3, Ankara 1987, s.94.

31 Yılmaz Aliefendioğlu, "Yasaların Cumhurbaşkanınca Geri Gönderilmesi", **Amme İdaresi Dergisi,** Cilt:21, Sayı:1, Mart 1988, s.16.

32 Anayasa Mahkemesi, Esas:1992/37, Karar:1993/18, Karar Tarihi:27.4.1993, **AYMKD,** Sayı:31, Cilt:1, s.102,103.

came predominant. With the advent of popular election of the President in Turkey, the idea that a semi-presidential regime has been adopted, or that there has been a significant deviation from the parliamentary system at the very least, has gained traction.

B. 2017 Constitutional Amendments and the Presidential System of Government

With the 2017 Constitutional amendments, the parliamentary system came to an end. Although the presidential government system, which was introduced as a result of the discussions around the presidential regime and following relevant constitutional amendments, is envisaged as a presidential regime, it does not coincide with the classical presidential regime. The strict separation of powers in the democratic implementation of the presidential regime does not exist in the presidential government system. In this system, the balance and control mechanisms between the powers have been bypassed. Contrary to the classical presidential regime, the President's powers such as renewing elections, appointing vice-presidents and ministers, appointing senior public officials, appointing members to the Council of Judges and Prosecutors have been defined as unlimited, unconditional powers that are not dependent on any common use and supervision.[33]

With the 2017 Constitutional amendments, the parliamentary system came to an end. In this system, the balance and control mechanisms between the powers have been bypassed.

With the 2017 Constitutional amendment, the President assumed the title of "Party-affiliated President," completely moving away from his supra-partisan position and taking his place in everyday politics. Since the presidential and Assembly elections were held at the same time, the Assembly elections were overshadowed, and the decision of the voters was reduced to the election of a leader. Although the President was given the opportunity to use his authority to renew the general elections as often and whenever he wanted, the envisaged three-fifths majority in the Assembly in order to renew the elections de facto rendered the Assembly powerless to renew the elections (as the legislative majority would most likely depend on the President).[34] It was designed as an inevitable outcome that the party led by the President would have a majority in the Parliament. When evaluated together with the electoral system in Turkey and the political order created by the Law on Political Parties, the system inevitably brought the majority of the Assembly under the control of the party-affiliated President.

The presidential government system – with its features such as the centralization of authority and power concentrated in the President, the fact that the Constitution has disrupted the legislative-executive balance in favor of the executive much more

33 Kemal Gözler, **Elveda Anayasa,** Ekin Yayınevi, Bursa 2017, s.21.

34 Ece Göztepe, "Cumhurbaşkanlığı Sistemine Geçiş ve Anayasa Değişikliği", **Güncel Hukuk Dergisi,** Mart 2017, s.49.

decisively than previously, and the President's decisive power, which is totally free of any checks and balances – has resulted in the personalization of political power in the person of the President.[35]

The power to issue decrees having the force of law, which belonged to the Council of Ministers in the previous period and was based on the enabling law enacted by the Assembly, was reconstrued as the President's power to issue decrees following the 2017 Constitutional amendments. In its new form, this power has become a primary power, similar to the direct legislative power, as it does not require an enabling law, just as in the state emergency regime. The areas to be regulated by presidential decree have been kept quite extensive. Some issues that should be regulated by law, such as the establishment and abolition of ministries, their duties and powers, organizational structure, and the establishment of central and provincial organizations were left to Presidential decrees. The President has become involved in the law-making process. His powers in making laws have also expanded, and his authority to send laws back to parliament for further discussion during the approval phase has turned into a veto power due to the higher majority sought in the second meeting.

The areas to be regulated by presidential decree have been kept quite extensive.

Regarding the legislative-executive balance, "interpellation" and "verbal question," both mechanisms of ensuring the political oversight of the executive's policies by the legislature, have been eliminated under the presidential government system. The "criminal liability" of the President, vice-presidents or ministers is almost impossible to demonstrate, since the parliamentary majorities envisaged to use this legislative path are very difficult to attain (three-fifths of the total number of members for the opening of a parliamentary investigation, two-thirds of the total number of members for referral to the Supreme Court).

In the presidential government system, the budgetary authority of the Assembly, which used to be another important tool of control against the executive, also lost its effectiveness. In the event that the Budget Law proposal to be submitted by the President is not discussed by the parliament in due time and put into effect, the method of applying it by increasing the previous year's budget according to the revaluation rate has been adopted. Since the executive organ will never be without a budget in any case, the Assembly will not be able to use the budget as a brake and control tool against the executive organ.

In the presidential government system, the President possesses the power to appoint vice-presidents, ministers and senior bureaucrats himself individually.

35 Ekrem Ali Akartürk- Tevfik Sönmez Küçük, **Güçlendirilmiş Parlamenter Sistem,** Adalet Yayınevi, Ankara 2021, s.66.

As a result of the President appointing a member of parliament as a minister or vice-president, the appointed person's parliamentary term ends. There is no possibility for these persons to return to their position as member of parliament once their vice-presidential or ministerial duties end. Thus, the political life of someone who is a vice-president or minister is becomes dependent on the President.[36]

The presidential government system does not exhibit the complete features of any democratic government system; rather, it has collected features from different government systems in such a way as to empower the President the most. The form of government that emerged following the constitutional amendments did not comply with a presidential regime, where the powers are strictly separated in terms of formation and functioning, and neither did it resemble a parliamentary regime, which works with balance and control mechanisms and where the legislature has effective control over the executive.

36 Korkut Kanadoğlu- Ahmet Mert Duygun, "6771 Sayılı Anayasa Değişikliği Hakkında Kanun'a İlişkin Değerlendirmeler", **Güncel Hukuk Dergisi,** Mart 2017, s.60.

III. THE EXECUTIVE IN TURKEY'S PARLIAMENTARY SYSTEM, AND THE PROPOSAL FOR A STRENGHTENED PARLIAMENTARY SYSTEM

A. The Legislature Did Not Balance the Executive During the 1982 Constitution's Parliamentary Regime

The legislative-executive balance was weakened to the detriment of the legislature.

Parallel to the overall implementation of the parliamentary system, the Prime Minister was brought to a much stronger position during the 1982 Constitution period compared to before. The legislative-executive balance was weakened to the detriment of the legislature. Due to the strong executive and executive parliamentary majority that emerged as a result of the electoral system in place, it was the government alone that determined politics. The head of the government, who dominated the parliamentary majority, was able to turn the legislature, using the majority he had, into an organ of "indiscriminate approval under the guise of law" regarding his own policies.[37] In the parliamentary system, the general tendency for the executive's de facto abolition power to be exercised by the Prime Minister was also the case in Turkey, and the Prime Minister himself had the opportunity to determine the timing of elections.[38]

The system envisaged in the first version of the 1982 Constitution was defined as a "rationalized parliamentary regime" because of the methods to make the parliamentary regime more functional and the measures taken to increase the stability of the government. The 1982 Constitution, in its first version, mainly empowered the President within the executive, but also carried the Prime Minister to a point beyond being first among equals in the government. Such constitutional arrangements stemmed from the quest for authority that constituted the spirit of the 1982

37 Örsan Ö. Akbulut, "Siyasal İktidarı Kullanma Aracı Olarak Başbakan", **Amme İdaresi Dergisi,** Cilt:36, Sayı:1, Mart 2003, s.62.

38 Mustafa Erdoğan, "Başbakanlık Hükümeti mi?", **Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi,** Cilt:XLIV, 3-4, 1989, s.232.

Constitution. While the Constitution, in general, disrupted the balance of powers by giving weight to the executive, it strengthened the position of the President in the executive and highlighted the Prime Minister in the government.

Within the government, the strong commitment of ministers to the Prime Minister is grounded in the Constitution. The last paragraph of Article 109 of the 1982 Constitution as it was before the 2017 Constitutional amendments stated, "The ministers shall be nominated by the Prime Minister and appointed by the President of the Republic, from among the members of the Grand National Assembly of Turkey, or from among those eligible to be elected as deputies; and they can be dismissed, by the President of the Republic, upon the proposal of the Prime Minister when deemed necessary." The second paragraph of Article 112 of the Constitution, which can be seen as the basis for the Prime Minister to go beyond being the first among equals, included the provision, "Each minister shall be responsible to the Prime Minister, for the conduct of affairs under his/her jurisdiction, and for the acts and activities of his/her subordinates." In the third paragraph of the same article was included the provision, "The Prime Minister shall ensure that the ministers exercise their functions in accordance with the Constitution and the laws and shall take corrective measures to this end."

In implementation of the parliamentary system during the 1982 Constitution, the main aspect that weakened the legislature against the executive was problems related to political functioning. For example, in terms of political parties, the lack of democracy within the party constituted one of the main reasons for the loss of power of the legislature in the political context against the executive. With the consequences of the Elections and Political Parties Law, the legislature continuously lost its power faced with the power of the executive, as the executive was embodied in the leadership of the party which had the majority in the Parliament and the opportunity to form the government on its own.

Due to the high threshold rate, the proportional representation system prevented many parties from taking their place in the Assembly.

Although the concepts of representative democracy and democratic society in Turkey are stipulated in the Constitution, this system could not be made to suit a pluralistic society, since methods which distance these two concepts from each other, such as the 10% national threshold, were also built into the system.[39] Due to the high threshold rate, the proportional representation system prevented many parties from taking their place in the Assembly. The 10% national threshold is considered to be a high enough rate to turn the electoral system into a majoritarian one. Voters, except those who support strong parties, thus lose the opportunity to be represented. This situation, which is considered a major deficiency in terms of democratic participation in the administration, demonstrated its effects much more severely as it occurred alongside issues related to other democratic methods.[40]

39 İbrahim Ö. Kaboğlu, **Anayasa Hukuku Dersleri (Genel Esaslar),** 16. Baskı, Legal Yayınları, İstanbul 2021, s.192.

40 Sevtap Yokuş, "Türkiye'de %10 Seçim Barajına İlişkin Hukuksal ve Siyasal Tartışmalar", **Hukuk ve Adalet Eleştirel Hukuk Dergisi,** Yıl:4, Sayı:11, Yaz 2007, s.299, 300.

In addition to the election system in Turkey, which creates an opportunity to bring the majority to power on its own, the absence of democracy within the party during the nomination of parliamentary candidates before the election makes democratic politics impossible in terms of legislation. While the electoral system in place makes the party representing the majority the only power, the structure that prevents intra-party democracy results in the leader being the only power within the party. The power of the leader can be observed at the stage where he nominates the parliamentary candidates on his own, even before the elections. With this method, the leader of the ruling party, which is formed by the majority, actually determines the majority of the Assembly on his own. By contrast, in the earlier parliamentary system the Prime Minister dominated the Assembly, since the party with the majority in the Assembly formed the government. For this reason, the Assembly could not be a power on its own, and could not wholly fulfill its legislative function.

In order for the legislature to effectively balance the executive, it is imperative that deputies, especially opposition deputies, produce effective politics. Since political parties are dependent on the leader, deputies and party members fail to produce solutions to problems employing new perspectives in face of social change. The leader, due to his dominant role, prevents the deputies of his party from participating in politics in any real sense.[41] In terms of deputies, this situation often creates an appearance of ineffectiveness in politics. The natural consequence is a legislature which cannot fulfill its function against the executive. The dysfunction of the legislature and the absence of democratic politics are not new. This is a problem that started after the September 12 coup, including implementation of the parliamentary system in the 1982 Constitutional period, and that has continued, gradually increasing, until today.

The power of the leader can be observed at the stage where he nominates the parliamentary candidates on his own, even before the elections.

B. The Balance Between Legislature and Executive in the Proposed Strengthened Parliamentary System

Along with the political conflicts and polarizations in Turkey, the government system has also been at the center of debates. The six opposition political parties, meeting on common ground regarding the government system, agreed on a "strengthened parliamentary system" with its broad content targeting the entire political order.[42]

Beyond being merely a governmental system reform, an extensive content based on democracy and the rule of law is contained in the proposal for a strengthened parliamentary system. The envisaged system is explained as a political order in which

41 İlter Turan, **"Türkiye'de Parlamenter Sistemin Sorunları ve Çözüm Önerileri" Semineri,** Türkiye İşveren Sendikaları Konfederasyonu 35.Yıl, Ankara 1997, s.60.

42 **Güçlendirilmiş Parlamenter Sistem,** Cumhuriyet Halk Partisi (CHP), Demokrasi ve Atılım Partisi (DEVA), Demokrat Parti (DP), Gelecek Partisi, İYİ Parti, Mutabakat Metni, 28 Şubat 2022.

the understanding of pluralist and participatory democracy is predominant, with transparency and accountability in public administration, and where all actions and transactions of the administration are effectively supervised by the judiciary.[43] Beyond a government system embodied in the legislative-executive relations, the proposal for a strengthened parliamentary system symbolizes and promises many things: pluralism, fair representation, guaranteeing rights and freedoms, especially freedom of expression, independence of the judiciary, fair and transparent administration, and impartiality, equality and merit in public administration.

The proposal for a strengthened parliamentary system is not a return to the previous parliamentary system in Turkey, and is intended make the parliamentary regime more functional in the legislative-executive balance, with methods that would make the executive more efficient. This system is envisaged to maintain the stability of the government, while another objective is that the legislature effectively supervises the executive.[44] A number of measures have been declared in order to ensure that the legislature has a balancing power against the executive. A new 3% election threshold aims to increase the representative power of the Turkish Grand National Assembly, in order to reflect the will of the nation effectively in the Assembly, and to provide stability to the executive. The reorganization of political parties and election legislation, and the empowerment of intra-party democracy is envisaged, with a view to political parties becoming able to fulfill their democratic functions.[45]

The proposal for a strengthened parliamentary system included measures for the effective functioning of the legislature, and pluralism was addressed in the working procedures of parliamentary committees.

The proposal for a strengthened parliamentary system included measures for the effective functioning of the legislature, and pluralism was addressed in the working procedures of parliamentary committees. New Bylaws of the Grand National Assembly of Turkey are to be prepared in order to ensure pluralism in parliamentary work and to carry out the legislative work in a participatory, effective and transparent manner. Proposals also aim to make legislation effective against the executive, such as that the authority of the Council of Ministers to issue decree laws may be exercised based on the law adopted by the Turkish Grand National Assembly, in which its subject, limits and duration are clearly stated, and that fundamental rights and freedoms cannot be regulated by decree laws.[46]

In the Memorandum of Understanding, it was strongly emphasized that the parliamentary system's oversight methods would be used effectively with the aim of making the Assembly a negotiating body, and making the government's oversight by the Assembly effective. The supervision of public institutions and organizations by the

43 Akartürk-Küçük, Güçlendirilmiş Parlamenter Sistem,... s.15,16.

44 Güçlendirilmiş Parlamenter Sistem Mutabakat Metni, s.14,24.

45 Güçlendirilmiş Parlamenter Sistem Mutabakat Metni, s.20.

46 Güçlendirilmiş Parlamenter Sistem Mutabakat Metni, s.21,22.

Assembly, as a requirement of the principles of transparency and accountability, is also counted among the tools that will improve the efficacy of the Assembly's oversight.[47]

The Memorandum of Understanding includes a rule stipulating that the President is elected for only one term and seven years, to ensure his impartiality. The President-elect will be dismissed from his party if he has one, his executive powers will be exercised by the Council of Ministers, which has political responsibility towards the Turkish Grand National Assembly, his political irresponsibility regarding his duty will be essential, and the principles regarding his legal and criminal responsibility will be regulated in the Constitution.[48] In addition to these determinations, although the Memorandum of Understanding states that the presidency is to be a symbolic position, the election procedure for the presidency is not clearly defined. Also in the Memorandum of Understanding, similar to the Constitution as it was prior the 2017 amendments, it is stated that the exceptional actions that the President may undertake individually shall be regulated in the Constitution, but it remains unclear what these actions are.

The Memorandum of Understanding includes a rule stipulating that the President is elected for only one term and seven years, to ensure his impartiality.

The Memorandum of Understanding states that the President's veto power, which weakens the legislative function of the Assembly, is to be abolished, and that the power of sending laws back to the Assembly, which functions merely as a warning during law-making processes, is to be granted once again. It also states that the authority to declare a state of emergency rests with the Council of Ministers convened under the chairmanship of the President, but that emergency decree laws will not be included in the legal system.[49]

Besides promising mechanisms that would ensure the effectiveness of the legislature against the executive, in order to ensure the stability of the government, the Memorandum of Understanding states that the President will give the task of forming the government to the leader of the political party with the most deputies in the parliament, in accordance with the traditions of the parliamentary system.[50]

The proposal for a strengthened parliamentary system did not contain within its scope several important democratic mechanisms which aim to counterbalance the executive. For example, local government reform, an extremely important way to limit power through vertical balancing of power, was not prominently included in the Memorandum of Understanding. As another example, regarding the counterbalancing of the executive, the public's means of participation in the administration outside the election periods were also not mentioned in the Memorandum.

47 Güçlendirilmiş Parlamenter Sistem Mutabakat Metni, s.23.

48 Güçlendirilmiş Parlamenter Sistem Mutabakat metni, s.24.

49 Güçlendirilmiş Parlamenter Sistem Mutabakat Metni, s.24,25.

50 Güçlendirilmiş Parlamenter Sistem Mutabakat Metni, s.25.

IV. THE OBLIGATION TO DISCUSS THE EXECUTIVE AND THE GOVERNMENT SYSTEM IN THE CONTEXT OF OVERSIGHT AND BALANCE

The democratic functioning of the executive power and the democracy of the government system may only be assured by oversight and balance, and through democratic mechanisms.

A. 2017 Constitutional Amendments, and the Influence of the Executive on the Judiciary

The method of appointing constitutes the first step and basic criterion in determining the impartiality and independence of the judiciary. With the 2017 Constitutional amendments, the President's direct appointment powers in the higher judiciary bodies were increased. This was among the issues that were heavily criticized at the time of the changes. This was because the constitutional amendments enabled the President to be a party member on the one hand, and expanded his power over the judiciary on the other. This situation has brought with it legitimate concerns and criticisms about the executive power's influence over the judiciary, and the politicization of the judiciary.

With the 2017 Constitutional amendments, the President's direct appointment powers in the higher judiciary bodies were increased.

The formation and functioning of the Council of Judges and Prosecutors, which has a very important role in personnel and disciplinary affairs as well as sanctions up to dismissal of all judges and prosecutors, was given a different form with the 2017 Constitutional amendments. The opportunity was created to make arrangements regarding the duties of judges and prosecutors through presidential decree. Considering that the President is a party member, this situation has increased the already existing problems concerning the independence and impartiality of the judiciary.

The structural reorganization of the Council of Judges and Prosecutors under the 2017 Constitutional amendments did not abolish the regulation, criticized for years in terms of the independence of the judges, that the Minister of Justice is the chairman of the

Council and the Undersecretary is a subordinate member of the Council. The Undersecretary of the Ministry of Justice also continues to be a natural member of the Board. Considering that the constitutional and de facto commitment of the Minister of Justice and the Undersecretary to the President is much stronger in the new period, the fact that the Minister of Justice is also the head of the Council of Judges and Prosecutors, a body of vital importance in terms of the personal rights of all members of the judiciary, and that the Undersecretary is a natural member, casts a definite shadow on the judiciary's impartiality and independence. In addition, due to the fact that the two natural members are directly subordinate to the President, and that the number of members of the Board decreased due to constitutional amendments, the proportion of members who might be under the influence of the President has thus automatically increased.

With the 2017 Constitutional amendment, the Constitutional Court is also now predominantly composed of members directly appointed by the President. According to the Constitution in its previous form, the members elected by the President came from a pool of candidates determined by the relevant bodies; the number of these members is reduced under the current circumstances. As the number of memberships determined by election decreased, the result was an increase in the proportion of members directly appointed by the President.

Constitutional provisions and other legislation regarding political parties in Turkey have had a devastating effect on the function of parties in democratic life.

Another important 2017 Constitutional amendment concerning the higher courts was the repeal of regulations in the form of statutes, which were subject to review by the Council of State. In this way the opinion of the Council of State, which was obligatory for certain regulatory proceedings, was bypassed. The President's power to take regulatory action was redefined to include bylaws, without being subject to preliminary oversight.

The weakening of the judiciary in favor of the executive, which has been constant since the 1982 Constitution came into force in Turkey, became yet more obvious with the 2017 Constitutional amendments. In particular, the way in which the higher judicial bodies are formed is a convenient means of keeping the judiciary in the shadow of the executive. The problems related to the independence and impartiality of the judiciary, which is obliged to supervise the executive in its political and administrative aspects, need to be resolved in order to ensure democracy, and not just as part of discussions on the system of government.

B. Counterbalancing the Executive with Political Opposition: The Freedom of Political Parties

Constitutional provisions and other legislation regarding political parties in Turkey have had a devastating effect on the function of parties in democratic life. Beyond the constitutional provisions, the Law on Political Parties has determined the basic principles and objectives of the policies to be formulated by the parties, and even

the details of some of them, within the framework of the "official ideology" and perceived any opposing or divergent position as grounds for shutting down the parties. Some of these provisions have nothing to do with the protection of the democratic regime. It is not the liberal democracy which these provisions aim to protect, but the order shaped by the authoritarian mentality. Political pluralism is rejected, and parties are expected to defend the same ideology. Specifically, political parties are defined as state institutions in the Law on Political Parties.[51]

Article 14 of the 1982 Constitution, which determined the main direction of the prohibitions on political parties, aimed to protect the "state" against the political parties. With this provision, which exceeds protection of the "liberal and pluralist democratic order," the main purpose of the militant democracy understanding is also exceeded. The protection of the state was prioritized over the protection of the rights and freedoms that form the basis of democratic life. In essence, all views other than constitutional ideology are prohibited by this clause.[52]

In the 2001 Constitutional amendments, changes were made to pave the way for the freedom of political parties. For example, concerning the sanction of partial or complete deprivation of state aid, depending on the gravity of the acts in question, instead of the permanent closure of the political party against which a closure lawsuit is filed, a step was taken towards compliance with the principles determined by the Venice Commission, which aimed to establish a common standard of democracy within the European Commission.[53] Another amendment made in 2001 regarding the freedom of political parties made changes to Article 149 of the Constitution. To the first paragraph of this article was added the provision, "a majority of three-fifths of the vote is required in order to decide on closure in political parties' cases." With the 2010 Constitutional amendment, this ratio was changed to two-thirds. The aim of these amendments, which seek a qualified majority for the closure decision, is to make the closure of political parties more difficult.

It is not the liberal democracy which these provisions aim to protect, but the order shaped by the authoritarian mentality.

Despite these promising changes in the Constitution, the Law on Political Parties preserves its pattern of prohibitions. For example, Article 80 of the Law on Political Parties, which is titled "Protecting the principle of the unity of the state," is understood to mean that political parties cannot defend federalism, or even the strengthening of regional administrations.[54]

51 Oktay Uygun, "Mücadeleci Demokrasi ve Siyasal Partilerin Kapatılması" **Kamu Hukuku İncelemeleri,** On İki Levha Yayınları, İstanbul 2011, s.796.

52 Mustafa Erdoğan, **Demokrasi, Laiklik, Resmi İdeoloji,** 2.Baskı, Liberte Yayınları, Ankara 2000, s.367,368.

53 Yusuf Şevki Hakyemez, "2001 Yılında Yapılan Anayasa Değişikliklerinin Siyasi Parti Özgürlüğü Üzerindeki Etkileri", **Anayasa Yargısı,** Sayı:19, Antalya 2002, s.564.

54 Mehmet Turhan, "Demokratik Devlet İlkesi Açısından Siyasi Partilerin Kapatılması ile İlgili Hükümlerdeki Uyumsuzluklar", **Yeni Türkiye,** Yıl:2, Sayı:10 (Temmuz-Ağustos 1996), s.418.

In the closure decisions of the Constitutional Court, two of the prohibitions determined in paragraph 4 of Article 68 of the Constitution have been decisive. The first of these is the principle of "indivisibility of the State" and the second is the principle of "secularism," or "laïcité." The Constitutional Court, in its decisions using the "principle of indivisibility" as grounds for closure, has made the formula "Single state, indivisible territory, one nation" its fundamental criterion. In interpreting these concepts, the Constitutional Court has strayed into historical, sociological and linguistic assessments that go beyond the bounds of law.[55] In the decision of the Constitutional Court to close the People's Labour Party,[56] the statement, "... Citizens of all origins within the Turkish nation have found employment in every task and job according to their wishes and achievements, without any discrimination; they have had the opportunity to benefit from and contribute to the Turkish language and culture through studying, marriage, development and promotion everywhere in Turkey, in all its villages and cities..." can be given as an example of these assessments which exceed the bounds of law. All kinds of different opinions and suggestions regarding the structure of the state were interpreted as prohibitions regarding indivisible unity. The condition of realizing opinions into action was not required by the Constitutional Court in making such determinations, and breach of the norm was deemed sufficient grounds for prohibition even if it remained at the stage of pure thought.[57]

The decisions of the Constitutional Court so far are inconsistent with the reports of the Venice Commission of the Council of Europe, of which Turkey is a member.

The Constitutional Court's understanding of secularism also led to serious limitations in terms of the freedom of political parties. As a result of this particular understanding, the Court has displayed a positive and imposing attitude that does not comply with universal standards. As a result of the meaning it ascribes to secularism, the Court has formulated religion as devoid of public visibility, reduced it to a "conscientious fact" and turned it into a "positivist ideology."[58]

The decisions of the Constitutional Court so far are inconsistent with the reports of the Venice Commission of the Council of Europe, of which Turkey is a member. The procedures for opening closure cases are also incompatible. Even if it does not result in closure, the opening of the case alone has important political consequences.[59]

55 İbrahim Ö. Kaboğlu, "İfade Özgürlüğünün Siyasi Partilerce Kullanımının Sınırları", **Anayasa Yargısı,** Sayı:16, Ankara 1999, s.79,80.

56 Anayasa Mahkemesi. Esas:1992/1, Karar:1993/1, Karar Tarihi:14.7.1993, **Resmî Gazete:**18Ağustos1993, S:21672, s.202 vd.

57 Zühtü Arslan, "Anayasa Mahkemesi'nin Siyasal Partiler Politikası: "Ve çağı"nda "Ya-ya da"cı Anakronizmi Üzerine Bir Deneme", **Liberal Düşünce,** Yıl:6, Sayı:22 2001, s.8.

58 Ergun Özbudun, "Laiklik ve Din Hürriyeti", **Demokratik Anayasa,** Hazırlayanlar: Ece Göztepe ve Aykut Çelebi, Metis Yayınları, İstanbul 2012, s.199,200.

59 Serap Yazıcı, "1982 Anayasası ve Parti Yasakları", **Demokratik Anayasa,** Hazırlayanlar: Ece Göztepe ve Aykut Çelebi, Metis Yayınları, İstanbul 2012, s.265,266.

The fact that the closure of political parties has been turned into a permanent threat mechanism in Turkey also deters a strong political opposition. While suppressing the opposition directly hinders democracy, it also indirectly constitutes one of the reasons why the powerful executive fails to be counterbalanced.

C. Social Opposition Surrounding the Executive

Restrictions and prohibitions on the rights and freedoms of the social opposition, which constitute an important dimension of the overall restrictions and prohibitions, formed the essence of the 1982 Constitution, whose main purpose was to distance the masses from politics. The mentality that has dominated the administration since 1980 is completely opposed to the principle which dictates that "any unprohibited activity is allowed." This mentality, which is based on the assumption that groups or individuals have no freedom in matters that also fall within the scope of the state's activity, corresponds to a totalitarian understanding. The Constitution has not only restricted the area of collective freedoms to a great extent, but has also given arbitrary powers to the administration for the formation and activities of groups exercising collective freedoms.[60] With the 1982 Constitution, the powers of the administration over rights and freedoms ceased to be an exception and became a general rule. The exercise of collective rights, such as the right to assembly, association and strike, is largely left to the discretion of the competent authorities. The phrase "conditions in which delay is objectionable" allows the governing bodies to suspend or terminate the exercise of these rights and freedoms. This situation is also one of the outcomes of the 1982 Constitution's empowerment of the executive.[61]

The system of limitations laid out in the 1982 Constitution, especially before the 2001 amendments, was in the nature of prohibitions that violated human rights standards.

The system of limitations laid out in the 1982 Constitution, especially before the 2001 amendments, was in the nature of prohibitions that violated human rights standards. These provisions, which can be described as "constitutional prohibitions," are a result of a particular understanding of the protection of the state against the individual – the same mentality that brought forth the 1982 Constitution – and these provisions formed the center of gravity of the general regime of fundamental rights and freedoms in the 1982 Constitution.[62]

The general provisions of limitation, prohibition and even suspension of rights and freedoms are directed towards all rights and freedoms, individual as well as collective. However, the uneasiness of the 1982 Constitution against political activities in particular led to the development of special measures to prevent the rights and freedoms

60 Bülent Tanör, **Türkiye'nin İnsan Hakları Sorunu,** BDS Yayınları, İstanbul 1990, s.149.

61 Bülent Tanör, **İki Anayasa 1961-1982,** Beta Yayınları, İstanbul 1986, s.137.

62 Oktay Uygun, **1982 Anayasası'nda Temel Hak ve Özgürlüklerin Genel Rejimi,** İstanbul 1992, s.192.

that would enable these activities. Political activity and cooperation bans imposed on professional organizations such as associations, unions, cooperatives, foundations and public institutions, until the 1995 Constitutional amendments, are an example of this approach.[63]

With the aim of overcoming the obstacles to political participation to some extent, the first comprehensive amendments to the 1982 Constitution were made in 1995. However, these changes ultimately fell short of what was aimed at politically.[64]

The second comprehensive change in the field of rights and freedoms, which would ensure the political participation of the various segments of society, was made with the 2001 Constitutional amendments. These amendments were mostly aimed at securing the rights and freedoms in the Constitution and ensuring that they would be exercised. These changes failed to be implemented in real terms due to the inability to make fundamental changes in the sub-constitutional legislation, and the habits of former practice.

Freedom of collective communication, one of the instruments of the right to information which enables political participation, has also been severely restricted since 1982.

Freedom of collective communication, one of the instruments of the right to information which enables political participation, has also been severely restricted since 1982. The Turkish Radio and Television Corporation had become gradually less autonomous since 1971, and became completely dependent on political power after 1980. The amendment made in Article 133 of the Constitution in 1993 aimed to ensure the exercise of the freedom of audio-visual communication, and to eliminate the state monopoly on broadcasting. The Radio and Television Supreme Council (RTÜK), which was established with this aim, caused different problems, such as its failure to be objective in terms of its formation and functioning.[65] Although the freedom of the press regulated in Article 28 of the Constitution changed in a desirable direction with the 2001 constitutional amendments, this did not provide any improvement regarding restrictions and prohibitions. Distribution can be prevented, publication bans can be imposed, publications can be confiscated and periodicals can be closed.[66]

The longstanding assumption, which has turned into a social reflex over time, that social opposition is prohibited constitutes one of the most fundamental obstacles to democracy in Turkey. A social opposition structure which would constantly surround the executive power as an elected state body does not seem possible under the current conditions.

63 Tanör, İki **Anayasa,**... s.142.

64 İbrahim Ö. Kaboğlu, "Hukuk Kalıbında Yoğrulmuş Devlet Anayasa ve Toplum", **Cumhuriyet Gazetesi,** 10 Aralık 1996, s.12.

65 Ersan İlal, "Türkiye'de Radyo-Televizyon Yayınlarına İlişkin Anayasal ve Yasal Düzenlemeler: Bir Yanlışlıklar Güldürüsü", **Maltepe Üniversitesi İletişim Fakültesi Dergisi,** Yıl:1, İstanbul 2000, s.4,5.

66 İbrahim Ö. Kaboğlu, **Özgürlükler Hukuku,** 6. Baskı, İmge Kitabevi, Ankara 2002, s.504,505.

D. Counterbalancing the Central Executive with Local Administrations

The separation of state powers and especially the independence of the judiciary, or in other words the division or limitation of power, essentially aims at securing individual rights and freedoms as well as democracy. Counterbalancing power through political opposition also serves the same goal. However, today, in order to curb the top-down use of power, it has become particularly important to establish and develop authorities that are locally elected by the people, and that may be easily supervised. In the European democracies within the framework of the European Union, local levels of governance have become particularly prominent. In accordance with the contemporary meaning of democracy, the need to effectively balance power through local governments is emphasized. In other words, the powers of the government must be shared between the central and the local.

Democratization in the administrative structure has a key role in limiting political power. In all known government systems, vertical sharing of power has an important role in the development and establishment of democracy. Western democracies succeeded in establishing democracy through strong local governments, as a method of direct democracy, with documents that strengthen and highlight the local, such as the "European Charter of Local Self-Government" created within the Council of Europe.[67]

Democratization in the administrative structure has a key role in limiting political power.

Due to strict centralist policies and the centralized structure in Turkey, opportunities for participation in the administration have been restricted, public services have not been provided effectively and efficiently, and the democratic accountability of public institutions has been weakened.[68] Regulations on local governments are contrary to European standards and, in this context, to the Charter of Local Self-Government. This is because the principle of locality is not implemented in the administration, although it is a requirement of democracy. Administration in Turkey is essentially central. The power of the central government over local governments is decisive.

The creation of regional units larger than the traditional local units of provinces and municipalities, and the establishment of autonomous governments with legislative authority in these regions, occasion debates on whether a regional state implies the sort of federalist structure that would weaken Turkey as a unitary state.[69] However, this debate is not correctly grounded. The regional state and the federal state are separate structures. In the federal state, the concept of "free self-determination"

67 Sevtap Yokuş, "Hükümet Sistemini Demokrasi Ekseninde Tartışmak", **Yeni Türkiye**, Sayı:51 (2013), s.245.

68 Oktay Uygun, **Yeni Anayasada Yerel ve Bölgesel Yönetim için Öneriler,** Türkiye Ekonomik ve Sosyal Etüdler Vakfı (TESEV) Yayınları, İstanbul 2012, s.9.

69 Oktay Uygun, "Federalizm ve Bölgesel Özerklik Tartışmaları", **Demokratik Anayasa,** Metis Yayınları, İstanbul 2012, s.103-105.

comes into play in the center-periphery relationship. In this sense, the federal state is a union of political entities with the right to self-determination, whereas the territorial state's right to self-determination belongs to the nation as a whole.[70] Regional governments, on the other hand, can be explained as effective units in the strengthening of local governments, which is a basic way of gaining democratic power while remaining within the unitary state structure.

For Turkey, the issue of limitation and balancing of power must be discussed alongside local autonomy and strong local governments, which is one of the basic mechanisms of democracy.

70 Atilla Nalbant, **Üniter Devlet,** Yapı Kredi Yayınları, İstanbul 1997, s.226.

CONCLUSION

The power granted by the 1982 Constitution to the executive, and to the President within the executive, in a way unsuitable to a parliamentary regime has become so excessive as to eliminate democratic functioning, in conjunction with the acceleration created by the democracy deficits as a result of the presidential system adopted in 2017. The checks and balances to ensure the democratic functioning of the executive have also been bypassed. Under the presidential system of government, the President has the de facto opportunity to determine the legislature, to share in the legislative function, and to renew the legislature when he wishes. He himself determines the executive, and can appoint bureaucrats who determine the functioning of state institutions.

In Turkey, the political agenda in the institutional dimension of the state has focused on the government system, due to the power accumulated in the executive. However, it is necessary to deal with this issue in conjunction with all the other tools of democracy, and to seek solutions in such a context. This is because Turkey's main problem is a democracy deficit, and not just a problem with the system of government. Unless it is implemented with methods that open democratic channels, no government system can succeed in overcoming these barriers to democracy. Problems with the government system are not however unrelated to the democracy deficit. In this context, the independence of the judiciary, a field of rights and freedoms which allows political and social opposition, and horizontal power sharing as well as vertical power sharing constitute the main conditions for a democratic executive style.

In Turkey, the political agenda in the institutional dimension of the state has focused on the government system, due to the power accumulated in the executive.

BIBLIOGRAPHY

Atilla Nalbant, Üniter Devlet, Yapı Kredi Yayınları, İstanbul 1997.

Bakır Çağlar, "İktidar Yapısında "82 Formülü" ve Karşı-Tezler", İdare Hukuku ve İlimleri Dergisi (Prof. Dr. Lütfi Duran'a Armağan), No:1-3, Year: 9, 1988.

Bülent Tanör, Türkiye'nin İnsan Hakları Sorunu, BDS Yayınları, İstanbul 1990

Bülent Tanör, İki Anayasa 1961-1982, Beta Yayınları, İstanbul 1986.

Bülent Tanör-Necmi Yüzbaşıoğlu, Türk Anayasa Hukuku, Beta Yayınları, İstanbul 2019.

Cem Eroğul, Anatüzeye Giriş, İmaj Yayınları, Ankara 2000.

Cem Eroğul, "Cumhurbaşkanının Denetim İşlevi", Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, Cilt:XXXIII, No:1-2, March-June 1978.

Demirhan Burak Çelik-Burcu Alkış-Atagün Mert Kejanlıoğlu, "Türk Tipi Başkanlık Sistemi", Güncel Hukuk Dergisi, March 2017.

Ece Göztepe, "Cumhurbaşkanlığı Sistemine Geçiş ve Anayasa Değişikliği", Güncel Hukuk Dergisi, March 2017.

Ekrem Ali Akartürk-Tevfik Sönmez Küçük, Güçlendirilmiş Parlamenter Sistem, Adalet Yayınevi, Ankara 2021.

Erdoğan Teziç, "Cumhurbaşkanının Geri Gönderme Yetkisi", Anayasa Yargısı, No:3, Ankara 1987.

Ergun Özbudun, Türk Anayasa Hukuku, Yetkin Yayınları, Ankara 2017.

Ergun Özbudun, "Laiklik ve Din Hürriyeti", Demokratik Anayasa, Ece Göztepe ve Aykut Çelebi (ed.), Metis Yayınları, İstanbul 2012.

Ersan İlal, "Türkiye'de Radyo-Televizyon Yayınlarına İlişkin Anayasal ve Yasal Düzenlemeler: Bir Yanlışlıklar Güldürüsü", Maltepe Üniversitesi İletişim Fakültesi Dergisi, Year:1, İstanbul 2000.

Ersel Aldabak, "57. Hükümet Dönemindeki Bazı Gelişmeler Işığında 1982 Anayasasında Cumhurbaşkanı", İstanbul Üniversitesi Hukuk Fakültesi Mecmuası, Vol: LX, No:1-2, Year: 2002.

Fazıl Sağlam, "KHK Çıkarma Yetkisinin Sınırları: Uygulamanın Yaygınlaşmasından Doğabilecek Sorunlar", Anayasa Yargısı, No: 1, Ankara 1984.

Güçlendirilmiş Parlamenter Sistem, Cumhuriyet Halk Partisi (CHP), Demokrasi ve Atılım Partisi (DEVA), Demokrat Parti (DP), Gelecek Partisi, İYİ Parti, Mutabakat Metni, 28 February 2022.

İbrahim Ö. Kaboğlu, "Türkiye'de Anayasal Reformlar Üzerine", Anayasa Reformları ve Avrupa Anayasası, Türkiye Barolar Birliği İnsan Hakları Uygulama ve Araştırma Merkezi, Ankara 2002.

İbrahim Ö. Kaboğlu, Anayasa Hukuku Dersleri (Genel Esaslar), Legal Yayınları, İstanbul 2021.

İbrahim Ö. Kaboğlu, "İfade Özgürlüğünün Siyasi Partilerce Kullanımının Sınırları", Anayasa Yargısı, No: 16, Ankara 1999.

İbrahim Ö. Kaboğlu, Özgürlükler Hukuku, İmge Kitabevi, Ankara 2002.

İbrahim Ö. Kaboğlu, "Hukuk Kalıbında Yoğrulmuş Devlet Anayasa ve Toplum", Cumhuriyet Gazetesi, 10 December 1996.

İlter Turan, "Türkiye'de Parlamenter Sistemin Sorunları ve Çözüm Önerileri" Semineri, Türkiye İşveren Sendikaları Konfederasyonu 35.Yıl, Ankara 1997.

Kemal Gözler, Elveda Anayasa, Ekin Yayınevi, Bursa 2017.

Korkut Kanadoğlu-Ahmet Mert Duygun, "6771 Sayılı Anayasa Değişikliği Hakkında Kanun'a İlişkin Değerlendirmeler", Güncel Hukuk Dergisi, March 2017.

Lütfi Duran, "Anayasa Mahkemesine Göre Türkiye'nin Hukuk Düzeni (1)", Amme İdaresi Dergisi, Vol: 19, No: 1, March 1986.

Lütfi Duran, Türkiye Yönetiminde Karmaşa, Çağdaş Yayınları, İstanbul 1988.

Mehmet Akad-Abdullah Dinçkol, 1982 Anayasası Madde Gerekçeleri ve Maddelerle İlgili Anayasa Mahkemesi Kararları, Alkım Yayınları, İstanbul 1998.

Mehmet Turhan, Hükümet Sistemleri ve 1982 Anayasası, Dicle Üniversitesi Hukuk Fakültesi Yayınları, Diyarbakır 1989.

Mehmet Turhan, "Demokratik Devlet İlkesi Açısından Siyasi Partilerin Kapatılması ile İlgili Hükümlerdeki Uyumsuzluklar", Yeni Türkiye, Year: 2, No: 10 (July-August 1996).

Mustafa Erdoğan, "Başbakanlık Hükümeti mi?", Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, Vol: XLIV, No: 3-4, 1989.

Mustafa Erdoğan, Demokrasi, Laiklik, Resmi İdeoloji, Liberte Yayınları, Ankara 2000.

Muzaffer Sencer, "1961 Anayasasından 1982 Anayasasına", İnsan Hakları Yıllığı, Vol: 5-6, 1983-1984.

Mümtaz Soysal, 100 Soruda Anayasanın Anlamı, Gerçek Yayınları, İstanbul 1990.

Necmi Yüzbaşıoğlu, "Cumhuriyetin 75 Yılının Devletin Ana Kuruluşu Yönünden Değerlendirilmesi", Cumhuriyet'in 75. Yıl Armağanı, İstanbul Üniversitesi, İstanbul 1999.

Necmi Yüzbaşıoğlu, Türkiye'de Kanun Hükmünde Kararnameler Rejimi, Beta Yayınları, İstanbul 1996.

Oktay Uygun, Yeni Anayasada Yerel ve Bölgesel Yönetim için Öneriler, Türkiye Ekonomik ve Sosyal Etüdler Vakfı (TESEV) Yayınları, İstanbul 2012.

Oktay Uygun, "Federalizm ve Bölgesel Özerklik Tartışmaları", Demokratik Anayasa, Metis Yayınları, İstanbul 2012.

Oktay Uygun, "Mücadeleci Demokrasi ve Siyasal Partilerin Kapatılması", Kamu Hukuku İncelemeleri, On İki Levha Yayınları, İstanbul 2011.

Oktay Uygun, 1982 Anayasası'nda Temel Hak ve Özgürlüklerin Genel Rejimi, İstanbul 1992.

Örsan Ö. Akbulut, "Siyasal İktidarı Kullanma Aracı Olarak Başbakan", Amme İdaresi Dergisi, Vol: 36, No: 1, March 2003.

Serap Yazıcı, "1982 Anayasası ve Parti Yasakları", Demokratik Anayasa, Ece Göztepe ve Aykut Çelebi (ed.), Metis Yayınları, İstanbul 2012.

Sevtap Yokuş, "Hükümet Sistemini Demokrasi Ekseninde Tartışmak", Yeni Türkiye, No: 51, 2013.

Sevtap Yokuş, "Türkiye'de %10 Seçim Barajına İlişkin Hukuksal ve Siyasal Tartışmalar", Hukuk ve Adalet Eleştirel Hukuk Dergisi, Year: 4, No: 11, Summer 2007.

Turan Yıldırım, "Anayasa Mahkemesi Kararlarında Yürütme Organı", Hukuk Araştırmaları, Marmara Üniversitesi Hukuk Fakültesi Yayınları, Vol: 1, No: 3, September-December 1986.

Turgut Tan, "Türk Hukukunda Kanun Hükmünde Kararname Uygulaması ve Sorunlar", Prof. Dr. Latif Çakıcı'ya Armağan, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, Vol: 50, No:1-2, January-June 1995.

Yavuz Sabuncu, Anayasaya Giriş, İmaj Yayınları, Ankara 2002.

Yılmaz Aliefendioğlu, "Yasaların Cumhurbaşkanınca Geri Gönderilmesi", Amme İdaresi Dergisi, Vol: 21, No: 1, March 1988.

Yusuf Şevki Hakyemez, "2001 Yılında Yapılan Anayasa Değişikliklerinin Siyasi Parti Özgürlüğü Üzerindeki Etkileri", Anayasa Yargısı, No: 19, Antalya 2002.

Zafer Üskül, Siyaset ve Asker, Afa Yayınları, İstanbul 1990.

Zühtü Arslan, "Anayasa Mahkemesi'nin Siyasal Partiler Politikası: "Ve çağı"nda "Ya-ya da"cı Anakronizmi Üzerine Bir Deneme", Liberal Düşünce, Year: 6, No: 22, 2001.

Ankara Institute

The Ankara Institute is an independent and non-partisan research institution that focuses on political, economic, and geopolitical studies in Turkey and worldwide. The Institute, which performs regularly-based research on democratization, political pluralism, participation, accountability, and transparency, especially topics concerning Turkey's political and social life, has been the source of independent analysis and pluralistic dialogue. We offer solutions and draw roadmaps to Turkey's challenges.

Ankara Institute conducts monthly public opinion, content analysis, and data-driven social study. Besides, the Institute manages Perspektif.online site as a pluralist discussion platform to contribute to intellectual media life in Turkey.

www.ankarainstitute.org
www.perspektif.online
www.panoramatr.com

Centre for Applied Turkey Studies (CATS)

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.

https://www.cats-network.eu/

SEVTAP YOKUŞ

Prof. Dr. SEVTAP YOKUŞ was born in 1966. She completed PhD course on Public Law in 1995 at the Social Science Institute of Istanbul University. She started to work as lecturer on Constitutional Law in 1997 at the Law Faculty of University of Kocaeli. She obtained associate professor tittle in 2004 on Constitutional Law and currently working on Constitutional Law at the Faculty of Law of Altınbaş University. She is the author of the published books titled "The Impact of the European Convention on Human Rights on the State of Emergency Regime in Turkey", "Abuse of Rights and Freedoms", "The Changing Balances of the Government in Turkey" and "Constitutional Approaches for Resolution Process in Turkey" and also has many articles published in some reviews about human rights and constitutional law.

ANKARA INSTITUTE
CATS Centre for Applied Turkey Studies NETWORK
STIFTUNG MERCATOR
Federal Foreign Office

TURKEY'S SEARCH FOR A NEW POLITICAL SYSTEM

07

EXECUTIVE BRANCH IN TURKEY: ISSUES AND SOLUTIONS

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 Sevtap Yokuş evaluates the executive branch constitutes the seventh report of the academic contribution series that made out of 10 reports.