TURKEY'S SEARCH FOR A NEW POLITICAL SYSTEM

09

JANUARY'23
ANKARA

WHAT KIND OF A PARLIAMENTARY SYSTEM?

FAZIL HÜSNÜ ERDEM

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 in order to meet this end.

What Kind of a Parliamentary System by Fazıl Hüsnü Erdem is the ninth report of the 10 academic paper series.

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

I. INTRODUCTION

Discussions and the search for a government system in Turkey began before the 1982 Constitution came into force, and have continued until today. Particularly during the periods in which the search for a new constitution became intense, the question of what kind of a government system the new constitution should envisage was always on the agenda. The several concurrent crises in Turkey prior to 1980, and the search for a new constitution and government system in order to resolve these crises were decisive in the shaping of the 1982 Constitution, and the government system it envisaged. These factors were also influential in the debates surrounding the constitution and government system in later stages.

The centre-right politicians of the period blamed the 1961 Constitution for the social and political polarization which took place prior to 1980, as well as for the environment of conflict, widespread violence, government instability and political instability in general fostered by such polarization.[1] At the same time, it is claimed that with these justifications aimed at legitimizing the 1980 military coup, the 1961 Constitution, which had relatively democratic and libertarian qualities, was abandoned; and a new constitution which would end violence and political polarization, ensure the establishment of stable governments, eliminate the bottlenecks in the functioning of the parliamentary system and strengthen the supposedly worn-out state authority was constructed.[2]

1 Criticism and discussion of the 1961 Constitution began at a very early stage. The inability to prevent the widespread political violence before the 1969 elections increased the accusations against the Constitution. In this period, criticisms were made from both the political and the military wing, to the effect that the Constitution overstretched the regime of freedoms and weakened the state's authority. Within the framework of these criticisms including the demand for constitutional amendment, two important amendments were made to the 1961 Constitution in 1971 and 1973. These changes, which drew attention with their narrowing of the scope of freedoms and strengthening the state authority, in a way foreshadowed the 1982 Constitution (see Fazıl Hüsnü Erdem, "Türkiye'de Anayasa Sorunu ve Anayasal Arayışların Patolojisi Üzerine Genel Bir Değerlendirme", Hukuk Felsefesi ve Sosyolojisi Arkivi, Issue 5, 2002, pp. 83-84). The Justice Party and the Democrat Party, among the centre-right parties which did not find the 1971 and 1973 constitutional amendments sufficient, shared with the public their constitutional proposals prioritizing the state authority before 1980 (see Bülent Tanör, Osmanlı-Türk Anayasal Gelişmeleri, 3rd Revised Edition, Afa Yayınları, Istanbul, 1996, pp. 318-319).

2 The Chairman of the National Security Council, Gen. Kenan Evren, in his speech on Radio-Television on September 12, 1980, following the Turkish Armed Forces takeover of the country's administration, openly expressed his views on the reasons legitimizing the military intervention and on the form of the new constitution should take (see 12 Eylül Öncesi ve Sonrası, edited by General Secretariat of the National Security Council, Ankara, 1981, pp. 196-203).

The 1982 Constitution, the drafting of which was influenced by an attitude of reaction to the 1961 Constitution and the events that took place while it was in effect, was a constitution that did not reflect the spirit of the period when it was made, and lagged behind the development dynamics of the Turkish society at that time. The Constitution in question, in its original form before the subsequent amendments, prioritized the state in the individual-state relationship, exalted the state authority, went as far as possible in restricting the individual and his/her freedoms which it perceived as a threat against state authority, restricted the field of democratic politics, limited participation and pluralism, weakened the rule of law, did not adequately place balance and control mechanisms, and emerged as a tutelary, centralist and monist politico-legal document. In short, the 1982 Constitution, which was one of the legal consequences of the traumas created by the previous period,[3] became a constitution that aimed to resolve the aforementioned concurrent crises by including in itself formulas of "limited freedom", "incomplete democracy", a "weakened state of law" and a "strong state".

The 1982 Constitution, which was one of the legal consequences of the traumas created by the previous period, became a constitution that aimed to resolve the aforementioned concurrent crises by including in itself formulas of "limited freedom", "incomplete democracy", a "weakened state of law" and a "strong state".

These negative codes, which predominated the word and the spirit of the Constitution, not only made the 1982 Constitution far from the ideal of constitutionalism, but also influenced the parliamentary system preference of the new Constitution. The legislator, who preferred the parliamentary system,[4] sought to strengthen the executive – which historically and traditionally represented authority – in order to consolidate the tutelary state power in the new constitutional system. In the executive, the constitution preferred to strengthen the president, whom it envisioned as a kind of tutelage that would balance the authority of political powers.[5] Rather than the council of ministers, which is the main authorized and responsible wing of the executive, it envisioned a model of a presidency strengthened within a strong executive, by equipping the presidency, which is the irresponsible wing of the executive, with broad powers. The constitution gave the president extensive powers in the legislative, executive and judicial fields to an extent which challenged the logic of the classical parliamentary system, making him a parallel nexus of government, and the main command centre of the tutelary structure.[6]

3 Bakır Çağlar, "Türkiye'de 'Anayasa Sorunu'nun Yakın Geçmişi Üzerine Düşünceler", Yeni Türkiye, Issue 30, (Nov./Dec. 1999), p. 365.

4 "The 1982 Constitution mainly adopted the parliamentary regime model as the government system and accepted the collective and individual political responsibility of the ministers towards the Assembly. However, the President was given powers far beyond those in a classical parliamentary regime. The category of actions that the President can realize singlehandedly without being subject to the counter-signature rule was created, and it was stated that no application can be made to judicial authorities, including the Constitutional Court, against these actions (art. 105). Such parliamentary regimes are called 'weakened parliamentarism (parlementarisme atténué)' in the international literature" (Ergun Özbudun, "Türkiye'nin Parlamenter Sistem Tecrübesi", Türkiye'nin Sistem Arayışı, May 2022, p. 15).

5 Ergun Özbudun, Türkiye'nin Anayasa Krizi, Liberte Yayınları, Ankara, 2009, p. 33.

6 Fazıl Hüsnü Erdem, "2017 Anayasa Değişiklikleri ve Cumhurbaşkanlığı Hükümet Sistemi", Türkiye Tipi Cumhurbaşkanlığı Hükümet Sistemi Tartışmaları, Demokrasiyi Güçlendirme Derneği, İstanbul, 2022, p. 151.

The fact that the president, who has no political responsibility, is equipped with very broad powers has the potential to cause problems and crises in the functioning of the parliamentary system in three aspects. First, it makes it difficult to ensure the political neutrality of the president. Second, the president, when faced with a government with a different political leaning than his own, may disable the functioning of the government by using his constitutional powers. Third, presidential elections can lead to crises because of the temptation to seize such a strong centre of power.

And indeed, these three problems and their potential for crisis manifested themselves since the date of the Constitution's entry into force. There were problems in all three aspects, and these problems sometimes led to political crises. In this context, a significant number of the presidents who took office assumed attitudes that cast a shadow on the principle of impartiality; problems arose between the presidency, the government and the parliamentary majority; and almost every presidential election turned into a political crisis.[7]

After the 2007 presidential election crisis an amendment was made to the Constitution in order to avoid any such crisis in presidential elections to come.[8] Accordingly, the principle of election of the president directly by the people, and not by the Grand National Assembly of Turkey (TGNA), was adopted. Although no changes were made regarding the duties and powers of the president, and adoption of the method of election of the president by the people did not in itself transform the governmental system to a semi-presidential model, it did to a certain extent bring it closer to this system.[9]

Adoption of the method of election of the president by the people did not in itself transform the governmental system to a semi-presidential model, it did to a certain extent bring it closer to this system.

Undoubtedly, it was very clear that the direct election of the president by the people would strengthen the democratic legitimacy of the presidency, thus increasing the political weight of the president in the system and causing him to insist on using his constitutional powers to the fullest. In such a situation, the system was likely to crash if there were differences of opinion among the president, the government and the legislative majority.

Indeed, this possibility became a *de facto* reality after the first president to be directly elected by the people took office in 2014. Although he belonged to the same party as the President and was the leader of the political party that represented the majority in the Parliament, then Prime Minister Ahmet Davutoğlu was forced to resign

7 Erdem, 2017 Anayasa Değişiklikleri ve Cumhurbaşkanlığı Hükümet Sistemi, p. 152.

8 For the Constitutional Amendment Law dated 31 May 2007 and numbered 5678, see Official Gazette, 16.06.2007-26554.

9 Özbudun, Türkiye'nin Parlamenter Sistem Tecrübesi, p. 16.

from the premiership and party chairmanship as a result of an in-party coup d'état, on the grounds that he did not work in harmony with the President.[10]

After the Prime Minister of the time, Ahmet Davutoğlu, submitted his resignation to the President on May 4, 2016 and Binali Yıldırım was appointed as Prime Minister on May 24, 2016, all executive powers began to be exercised by the President. Thus, although the government system in effect during this period (May 24, 2016 to July 9, 2018) could theoretically be described as a "semi-presidential system", in reality it appeared as a "*de facto* presidential system".[11] Thus, the presidential system proposal submitted in 2012 by the Justice and Development Party (AK Party) to the Constitutional Reconciliation Commission, which was formed at the TGNA in order to make a new constitution, came into efffect, not *de jure* but *de facto*.

The opportunity to put an end to the distinction between the *de facto* state of the government system and the legal situation, and to provide the *de facto* situation with a legal cover emerged with the new political alliances that developed after the coup attempt on July 15, 2016. The extraordinary conditions created by the July 15 coup attempt provided a great opportunity for the one-man, authoritarian, oppressive and arbitrary administration of the government. The support of the various nationalist sections for the isolationist, authoritarian and oppressive policies implemented by the political power in suppressing the democratic and liberal civil and political opposition, which it saw as a threat to the "survival of the state", paved the way for the strengthening of an alliance between the government and these sections.

The extraordinary conditions created by the July 15 coup attempt provided a great opportunity for the one-man, authoritarian, oppressive and arbitrary administration of the government.

The Chairman of the Nationalist Movement Party (MHP), Devlet Bahçeli, who was pleased with the authoritarian, statist and nationalist political position to which the AK Party government rapidly moved, made an unexpected move in order to put an end to the confusion in the government system, and gave the green light to the quest for a presidential system, which had been suspended and dropped from the AK Party's agenda for a while.[12] Following Bahçeli's statement, a bill on constitutional amendment was drafted by the AK Party and the MHP in order to legalize

10 For Ahmet Davutoğlu's evaluations on this process, see https://tr.euronews.com/2022/05/13/davutoglu-1-kas-m-secimine-giden-surecte-ak-parti-icinde-sert-bir-mucadeleye-girmemem-hata (Date of Access: 28.09.2022).

11 Kemal Gözler, Türk Anayasa Hukuku, Ekin Basım Yayım Dağıtım, 4th edition, Bursa, 2021, p. 799.

12 In his speech at the group meeting on October 11, 2016, MHP Chairman Devlet Bahçeli expressed his views on the subject as follows: "Hurried system changes are not seen in countries governed by democracy. Nowadays, when the Republic of Turkey is struggling for survival, for the President, who is at the top of the political power and the state to contravene the law is very dangerous for our future. There are two alternative ways to eliminate this obvious danger. The first and the most correct and healthy one for us is the President's renunciation of *de facto* insistence of the presidential system, and withdrawing to his legal and constitutional limits. If this is not the case, the second alternative is the search for ways and methods for the *de facto* situation to gain a legal dimension." https://www.mhp.org.tr/htmldocs/genel_baskan/konusma/4136/index.html (Date of Access: 29.09.2022).

the existing situation in terms of both the government system and the phenomenon of personalized power. The constitutional amendment proposal, which envisaged the transition to a new government system, was passed through the Assembly without seeking a compromise with the opposition, and indeed without even being discussed within the AK Party.[13] The constitutional amendment package passed by the Parliament was accepted with a 51.41% yes vote against a 48.59% no vote in the referendum held on April 16, 2017, in a political atmosphere dominated by oppression and fear.[14]

13 For the "Law Amending the Constitution of the Republic of Turkey" dated 21.01.2017 and numbered 6771, see Official Gazette, 11.02.2017-29976.

14 For the decision of the Supreme Election Council regarding the results of the referendum, see Official Gazette, 27.04.2017-30050.

II. THE GOVERNMENT SYSTEM BROUGHT BY THE 2017 CONSTITUTIONAL AMENDMENT

With the 2017 constitutional amendment, which entered into force on July 9, 2018, a new and unique government system, the like of which is to be found nowhere else in the world, was introduced by providing the actual situation regarding the government system with a legal cover.

With the 2017 constitutional amendment, which entered into force on July 9, 2018, a new and unique government system, the like of which is to be found nowhere else in the world, was introduced by providing the actual situation regarding the government system with a legal cover. Although this *sui generis* system of government is presented as a presidential system, in reality it differs from the presidential system, which has been implemented with relative success in the US.

One of the distinguishing features of the presidential system is that the president and the parliament are elected in separate elections and for fixed terms, and neither body may end the legal existence of the other during this fixed period. However, with the 2017 constitutional amendment, it was stipulated that both the presidential elections and the parliamentary elections would be held on the same day (art. 77) and that the president and the Parliament would be given the authority to renew the elections (art. 116). Due to these regulations, which contradict the fundamental elements of the presidential system, this new system was called the "Turkish type presidential system" and later the "executive presidential (*cumhurbaşkanlığı*) government system", which has no predecessors in the literature and practice.[15]

Some of the features of the new government system adopted with the 2017 constitutional amendment are compatible with the presidential system, while others are compatible with the parliamentary system. It is possible to list the features similar to a presidential system as follows:[16]

- All executive powers are given only to the president, and the executive body is organized as a monist structure. In addition, ministers appointed and dismissed by the president are considered responsible to the president, not to the Parliament (art. 104/1.8, article 106/5).

15 Ergun Özbudun, Türk Anayasa Hukuku, Revised 21st Edition, Yetkin Publications, Ankara, 2021, p. 335.

16 For the features of the new government system, see Gözler, pp. 800-801.

- Establishing the principle that the president is elected directly by the people, not by the TGNA (art. 101/1).
- Adoption of the rule that a person cannot take office in both the legislative and executive branches at the same time (art. 106/5).
- The president, who represents the executive, is not given the authority to participate in the legislative activity through draft laws (art. 104).

The features similar to the parliamentary system in the new government system adopted with the 2017 constitutional amendment consist of the following:

- Granting the president the authority to renew the parliamentary elections (art. 116/2).
- If the TGNA decides to renew its own elections, the presidential elections are also renewed. In this way, the TGNA can terminate the president's office (art. 116/1).

As can be seen, although the government system introduced with the 2017 constitutional amendment predominantly has the characteristics of a presidential system, it cannot be said to be a presidential system in the full sense of the word. The new system of government is more like a South-American-style "presidential" system, with a fully-authorized "president" directly elected by the people, located at the centre of the state and government system.[17]

Although the government system introduced with the 2017 constitutional amendment predominantly has the characteristics of a presidential system, it cannot be said to be a presidential system in the full sense of the word.

When the changes made in the legislative, executive and judicial fields in the 2017 constitutional revision are evaluated as a whole, it is understood that the secondary founding power wants to establish a new governmental system in which there are no balance and control mechanisms in the relations between the executive and the legislature, or between the executive and the judiciary, and all the powers of the political authority are concentrated in the person of the president. This authority finds its expression in the executive, in which power becomes personalized, thus opening up space for the arbitrary and unlawful practices of the president. Considering the political practice, which started long before the constitutional amendment and became only more evident after its entry into force, it is possible to say that such a scenario was explicitly envisaged.

A (partial) list of the unconditional and unrestricted powers of the president is indeed impressive. His powers include renewal of elections; single-handedly appointing and dismissing ministers and senior public administrators; deputizing a vice-president without democratic legitimacy; nominating the candidates of his party's deputies as

17 Mustafa Erdoğan, Türkiye'de Hükümet Sistemi ve Siyasi Rejim İçin Yeni Bir Perspektif, Özgürlük Araştırmaları Liberal Perspektif Rapor, Issue 21 (June 2021), p. 8.

the party leader; issuing presidential decrees without the need for an authorization law that the Constitutional Court can review; using presidential decrees to exercise regulatory authority; using the budget without the need for Grand National Assembly approval; using deterrent veto power; appointing members to the Council of Judges and Prosecutors, the Constitutional Court and the Council of State; declaring a state of emergency; and issuing presidential decrees without any limitation during the state of emergency. The president represents a "centre of authority" that attracts and gathers all the diverse centres of power around him.[18]

It is not difficult to predict what kind of administration such a strong centre of gravity might turn into in practice. As a matter of fact, the Venice Commission, in its report on the constitutional amendment proposal, prepared before the constitutional amendments were submitted to referendum in March 2017, pointed out what these amendments meant and the danger that might arise if they came into force:

> *The proposed constitutional amendments aim to establish what the Turkish authorities have described as a "Turkish-style" presidential system, although they in no way reflect the well-rooted tradition of parliamentarism in Turkey but would constitute a decisive break in the constitutional history of the country. They are not based on the logic of separation of powers, which is characteristic for democratic presidential systems. Presidential and parliamentary elections would be systematically held together to avoid possible conflicts between the executive and the legislative powers. Their formal separation therefore risks being meaningless in practice and the role of the weaker power, parliament, risks becoming marginal. The political accountability of the President would be limited to elections, which would take place only every five years. (...) The Venice Commission finds that the proposed constitutional amendments would introduce in Turkey a presidential regime which lacks the necessary checks and balances required to safeguard against becoming an authoritarian one. (...) The Venice Commission is of the view that the substance of the proposed constitutional amendments represents a dangerous step backwards in the constitutional democratic tradition of Turkey. The Venice Commission wishes to stress the dangers of degeneration of the proposed system towards an authoritarian and personal regime.*[19]

The president represents a "centre of authority" that attracts and gathers all the diverse centres of power around him.

18 Erdem, 2017 Anayasa Değişiklikleri ve Cumhurbaşkanlığı Hükümet Sistemi, pp. 166-167.

19 Venice Commission, "Turkey: Opinion on the Amendments to the Constution", 10-11 March 2017, Opinion No.875/2017, CDL_AD (2017) 005, para. 126, 130, 133, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e

III. THE NEW GOVERNMENTAL SYSTEM: IMPLEMENTATION, CRITICISM AND FURTHER ENDEAVOURS

In the 2017 constitutional amendment process, the propaganda created by the AK Party and the MHP, both of which undersigned the proposal, promised that all the problems that Turkey had been experiencing over the years would be resolved with the adoption of the new government system as envisaged by the constitutional amendment package. It was stated that the biggest obstacle in front of Turkey's development and growth was the parliamentary system, that this system would be abandoned and that with the transition to the presidential system, Turkey would get rid of its shackles and take flight.[20]

Promised that all the problems that Turkey had been experiencing over the years would be resolved with the adoption of the new government system as envisaged by the constitutional amendment package.

In this process, promises were made regarding solutions to the country's problems, such as the strengthening of the TGNA, an end to coalitions, the stabilization of the administration, the independence and impartiality of the judiciary, the expansion of freedoms, the increase of Turkey's effectiveness in foreign policy and the rise of the economy. The new government system envisaged by the constitutional amendment proposal was presented a "magic cure-all" to remedy Turkey's chronic problems, thus raising the public's expectations very high. This expectation however led to the new government system being held responsible for the negative developments in the ensuing process, and in turn, disillusionment with the government system.

After the new government system came into effect, what was promised in the propaganda did not come true, and the problems Turkey faced increased daily, feeding into each other and becoming a comprehensive and deep crisis that affected all areas of life. All indicators of the economy worsened, the cost of living and unemployment increased, the purchasing power of citizens decreased, the Turkish currency depreciated. The principle of the rule of law, which was previously weak, was now

20 https://www.tccb.gov.tr/haberler/410/72248/mevcut-sistem-ulkede-istikrari-tehdit-ediyor

largely abandoned, and arbitrary administration was adopted. Partisan appointments were made in public administration by giving importance to loyalty rather than merit, the institutional identity of public institutions was weakened, and regulatory and supervisory institutions lost their independence. The judiciary was used as an apparatus for suppressing and silencing civil and political opposition, and was largely subordinated to the executive. There have been great regressions in the field of freedoms, and attempts were made to prevent the use of various rights and freedoms, especially the freedom of expression and the press. Turkey is now among the countries in the world with the most journalists in prison, and the most censorship and self-censorship in the media and social media. Immunities of the deputies were lifted by ignoring the will of the voters, which is an indispensable element of democracy, and trustees were appointed to replace the elected mayors. The power of the TGNA was weakened, and the country began to be governed by decrees rather than laws. In terms of legislative activities, the TGNA experienced its weakest period in the last thirty years. Coalitions, which were previously formed after elections, are now being formed beforehand. Social polarization and segregation became exacerbated, and social peace was damaged. A confrontational approach was followed in foreign policy, and Turkey became isolated in the international arena.[21]

The judiciary was used as an apparatus for suppressing and silencing civil and political opposition, and was largely subordinated to the executive.

Undoubtedly, it is not correct to blame the new government system alone for the emergence and/or entrenchment of the problems Turkey has been experiencing in recent years. Most of the problems experienced in almost every area of social life already existed. These problems are not of the kind that arise suddenly with the transition to a new government system. However, it should be noted that the new government system plays an important role in the aggravation of long-standing problems and the formation of new ones. It is possible to observe that the perception of the Turkish public also tends in this direction, as witnessed by the results of various public opinion surveys conducted since 2019.[22] According to the data in the recent report titled "Turkey's Search for a System: Social Perceptions and Expec-

21 For detailed information about the negative developments in the new government system, see Kemal Gözler, Cumhurbaşkanlığı Hükümet Sisteminin Uygulamadaki Değeri: Bir Buçuk Yıllık Bilanço, 27.12.2019, http://www.anayasa.gen.tr/cbhs-bilanco.htm (Date of Access: 11.10.2022); Checks and Balances Network, Presidential System of Government Towards 2021: Legislative and Executive, 21 December 2020, https://www.dengedenetleme.org/dosyalar/file/CHSde-Yasama-ve-Yurutme-Raporu-2021.pdf (Date of Access: 11.10.2022); https://www.dw.com/tr/cumhurba%C5%9Fkanl%C4%B1%C4%9F%C4%B1-sistemiyle-ge%C3%A7en-bir-y%C4%B1l%C4%B1n-bilan%C3%A7osu/a-49265227 (Date of Access: 11.10.2022); http://www.cumhuriyet.com.tr/haber/secim/1460572/Cumhurbaskanligi_Hukumet_Sistemi__24_Haziran_2018_den_bugune_kac_kanun_cikti__kac_kararname_yayimlandi_.html (Date of Access: 11.10.2022); http://www.cumhuriyet.com.tr/haber/turkiye/1718803/tek-adamlik-meclisi-eritti.html (Date of Access: 11.10.2022); https://www.artigercek.com/haberler/son-29-yilin-en-islevsiz-meclis-i (Date of Access: 11.10.2022); http://www.cumhuriyet.com.tr/haber/turkiye/1718803/tek-adamlik-meclisi-eritti.html (Date of Access: 11.10.2022); https://www.cumhuriyet.com.tr/haber/chpli-burhanettin-bulut-tek-adam-rejiminin-uc-yili-baslikli-bir-rapor-hazirladi-her-alanda-gerileme-1819694 (Date of Access: 11.10.2022); https://halktv.com.tr/gundem/baskanlik-sisteminin-5-yillik-faturasi-692351h (Date of Access: 11.10.2022).

22 For the results of the public opinion poll conducted during this period, see PİAR Research Company's research dated July 2019, https://www.diken.com.tr/piar-bugun-secim-olsa-akp-yuzde-36-parlamenter-sistem-isteenler-yuzde-62/ (Date of Access: 12.10.2022); AREA Research Company's May 2020 election survey.

tations" prepared by the Ankara Institute, the general average of satisfaction with the presidential system is 3.8 out of 10. Sixty-one percent of the participants share the opinion that the influence of the TGNA has decreased in the presidential system. Fifty-five percent of the respondents do not agree with the statement that "the presidential system will provide stability". The rate of those who agree with this statement remains at 31%. Fifty-four percent of the respondents think the economic crisis is related to the functioning of the presidential system, while 38% think it is not. According to the results of the research, the rate of those who support the current government system seems to have decreased to 31.7%. As a result of four years of experience, the rate of those who support the parliamentary system has increased to 59.2%. While the rate of those who support the continuation of the presidential system in its current form is 19%, the rate of those who say that the parliamentary system should be readopted is 51%.[23]

With the entry into force of the new government system, the simultaneous experience of the deepening and expansion of Turkey's problems soon led to re-ignition of discussions on the search for another government system. In the first year of the new system coming into effect (2019), the officials of the ruling party expressed their discomfort and hesitations about the functioning of the system, and stated the opinion that the system could be rehabilitated.[24] In the same period, the leaders of the opposition parties shared their discomfort with the new government system and called for a new constitution based on a return to the parliamentary system.[25] In the following period, political parties belonging to the opposition shared with the public that they had started work to prepare their own constitution drafts. At the same time, the opposition bloc – which is composed of the Republican People's Party, the Good Party, the Felicity Party, the DEVA Party, the Future Party and the Democrat Party, and known as the "Six-Party Alliance" by the public – came togeth-

According to the results of the research, the rate of those who support the current government system seems to have decreased to 31.7%.

23 Vahap Coşkun/Hatem Ete, Turkey's Search for a System: Social Perceptions and Expectations, Ankara Institute-Cats Network, Ankara, October 2022, p. 8-23.

24 AKP Group Chairman Naci Bostancı, regarding the first year of the Presidential Government System, said, "A study is being carried out on the Presidential Government System. It will give us a more objective idea. We do not see this as a political issue. Rehabilitating the system is a necessity based on reason. Work on rehabilitation continues." https://t24.com.tr/haber/akp-li-bostanci-cumhurbaskanligi-hukumet-sistemi-ne-iliskin-bir-calisma-yapiyon-rehabilite-etik-aklin-geregi,828269 (Date of Access: 12.10.2022).

Bülent Turan, another AKP Group Deputy Chairman, said that "revision is always possible in the new system" https://t24.com.tr/haber/bulent-turan-cumhurbaskanligi-hukumet-sistemi-nde-revize-her-zaman-mumkun,828419 (Date of Access: 12.10.2022).

AKP Spokesperson Ömer Çelik also made a statement to the press after the CEC meeting on 11 July 2019: "The system is being implemented. Within a year, there may emerge areas that need to be strengthened. There may be blockages in some places, which our deputies and our citizens complain about", and gave the signal for the revision of the new government system. https://www.cumhuriyet.com.tr/haber/akpden-cumhurbaskanligi-sistemi-aciklamasi-bir-takim-sikayetler-var-1483111 (Date of Access: 12.10.2022).

25 See https://www.dw.com/tr/muhalefet-cumhurba%C5%9Fkanl%C4%B1%C4%9F%C4%B1-h%C3%BCk%C3%BCmet-sistemine-y%C3%BCkleniyor/a-49447487 (Date of Access: 12.10.2022); http://www.cumhuriyet.com.tr/haber/siyaset/1508180/Meral_Aksener__Erdogan__birakmak_istemeyecek.html (Date of Access); http://www.cumhuriyet.com.tr/haber/siyaset/1458522/Anayasa_degismeli.html (Date of Access: 12.10.2022).

er in 2021 to commence a joint study on the "Strengthened Parliamentary System". The "Strengthened Parliamentary System Memorandum of Understanding", which was prepared as a result of studies that lasted for about a year, was shared with the public on February 28, 2022.[26]

Essentially, the concept of a Strengthened Parliamentary System is not one that is already known and used in the literature of political science and constitutional law. Rather, the concept was coined to indicate a new parliamentary system model that diverges from Turkey's past parliamentary system experiences, as a result of the discontent with the "Turkish type presidential system" adopted with the 2017 constitutional revision. The point of the new name is to clarify that there will not be a return to the nearly century-old "Turkish type parliamentary system" which has a negative connotation in the eyes of the public. From the text of the memorandum, it is understood that the Strengthened Parliamentary System is a proposal for a new parliamentary system based on the rule of law and separation of powers, which foresees the transition to the parliamentary system by ending the Presidential Government System, but differs from the parliamentary system implemented in the past. According to the text of the memorandum, "The Strengthened Parliamentary System is a system in which the legislature effectively supervises the executive and the will of the nation is represented at the highest rate, government stability is ensured, the executive is accountable before the legislature, the judiciary is fully impartial and independent, and the separation of powers is strongly established."

Essentially, the concept of a Strengthened Parliamentary System is not one that is already known and used in the literature of political science and constitutional law.

Considering the suggestions regarding the government system in the memorandum of the Six-Party Alliance in general, we may say that the model of parliamentary system envisaged in this proposal provides a suitable framework for the new government system that Turkey needs.

26 For the Strengthened Parliamentary System Memorandum, see https://im.haberturk.com/images/others/2022/03/02/A4.pdf (Date of Access: 13.10.2022).

IV. PROPOSAL FOR A NEW PARLIAMENTARY SYSTEM IN TURKEY

The essence of the proposal is the regulation of relations between the legislature and the executive according to a new understanding. The normative framework of the relationship between the two main organs of the state is a determining factor in revealing the nature of the political system in general, as well as the nature of the government system. Accordingly, this nature changes depending on whether the legislative and executive organs are strengthened against the other, whether balance and control mechanisms are included in the functioning of each organ in itself as well as in the mutual relations of both.

The essence of the proposal is the regulation of relations between the legislature and the executive according to a new understanding.

In the search for a system of government, while making recommendations regarding the relationship between the legislature and the executive, two concerns, which are difficult to reconcile with each other, become prominent. One of these is the concern to prevent the concentration of power in the executive and authoritarianism, and to make the system participatory, pluralistic and libertarian. This concern may result in a stronger legislature vis-à-vis the executive. The second concern regards an effective and stable executive. This might mean strengthening the executive over the legislature. What is right in the functioning of a democratic government system and the political system is to create a setup that takes both concerns into account.

In the search for a government system (and political regime), besides the concern for creating a participatory, pluralistic and liberal democratic regime, a stable and strong executive should also be an objective. Undoubtedly, the main priority for constitutionalism is to build a pluralistic democratic regime based on human rights and the rule of law. The design of a government system in accordance with constitutional theory is built on this fundamental priority. In this case, attention is drawn to the executive: an accountable, questionable and auditable executive is the intended outcome of this exercise. Such efforts however often lead to the establishment of

ineffective and unstable governments. Short-lived governments ultimately weaken the trust in democracy because they cannot adequately respond to the demands of the citizens. This is why governmental stability is considered to have a democracy-strengthening effect.[27]

What kind of a parliamentary system is suitable for Turkey? In seeking an answer to this question, attention should be paid to the balanced arrangement of the legislative and executive organs. Just as it is not right to weaken the legislative body in order to create an effective and stable executive, it is also not right to neutralize the executive in order to strengthen the legislature, which has historically been the guardian of the area of freedoms. Efforts should be made not to weaken the government while strengthening the parliament, and not to weaken the parliament while strengthening the government. The values represented by both organs must be reconciled without sacrificing one to the other.[28]

What kind of a parliamentary system is suitable for Turkey? In seeking an answer to this question, attention should be paid to the balanced arrangement of the legislative and executive organs.

That the judiciary, the third fundamental organ of the state, should be independent from the other two organs constitutes one of the basic principles of liberal democracies based on the rule of law. In government systems based on the separation of powers, a certain degree of interaction is envisaged between the legislative and executive organs. The organ where such interaction is not envisaged, however, is the judiciary. Regardless of the type of government system (presidential or parliamentary), it is an undisputed principle that the judiciary should be independent of both organs.

Considering that the judiciary supervises the legislative and executive acts in terms of compliance with the law, we observe that it is a balance and inspection mechanism which makes the principle of separation of powers possible by keeping the legislative and executive powers within their own limits. The judiciary, which indirectly affects the functioning of the government system and directly affects the character of the political regime, requires certain constitutional guarantees to be independent and impartial, and these must be taken into account in the search for a return to the parliamentary system.

After this brief evaluation of the pillars of the new parliamentary system proposal, concrete suggestions can be made regarding the formation and functioning of the three main organs of the state within this model.

27 Erdoğan, pp. 19-20.

28 The same view is expressed in the Strengthened Parliamentary System Memorandum of the Six-Party Alliance as follows: "In our government system, we take the principles of **fairness in representation** and **stability in administration** equally as the basis. Based on the bitter experiences our country has had in the past, we are determined not to weaken the government while strengthening the Assembly, **and not to weaken the Assembly while strengthening the government**."

A. STRENGTHENING THE LEGISLATIVE BODY

The role and importance of the Turkish Grand National Assembly (TGNA) in the state system has gradually diminished since the 1982 Constitution came into force. In its first and original form, the 1982 Constitution kept the position of the Assembly within the overall power scheme weak, as a reflection of its reactionary character with regard to the 1961 Constitution. In search of a strong executive, the legislator tried to weaken the legislature which he saw as an obstacle to the strong executive, with constitutional arrangements on the one hand, and political parties and election laws on the other. Thus the TGNA's position and function, both of which were already weak within the system to begin with, have diminished even more in terms of both legislative and supervising functions, with the entry into force of the new government system brought about by the 2017 constitutional amendments. In this way the TGNA has become an ineffective element, to the extent that it has ceased to be a platform where public issues are freely discussed and debated.[29]

The role and importance of the Turkish Grand National Assembly (TGNA) in the state system has gradually diminished since the 1982 Constitution came into force.

However, when the parallel relationship between the historical development of democracy and the empowerment of the Parliament is taken into account, it is well understood how the empowering the TGNA is essential for a stable and strong democracy in Turkey. The ability of the Assembly, which is the manifestation of the will of the people, to fulfill its traditional functions (making laws and supervising the executive) effectively and efficiently, depends on the existence of factors such as being highly representative, making effective the legislative activities, ensuring participation and pluralism in the law-making processes, and strengthening the powers of overseeing the executive.

1. Enhancing the Representation and Prestige of the TGNA

One way of further empowering the TGNA would be to enhance its representative capabilities. This in turn requires a political parties regime and an electoral system which make the deputies actually feel powerful. Therefore, in the effort to strengthen the TGNA, it is of great importance to concentrate on the constitutional and legal arrangements that will ensure intra-party democracy and the principle of fair representation. At the same time, legal measures aimed at re-establishing the TGNA's prestige and credibility in the eyes of the public should also be considered as a necessity to make the TGNA strong. In this context, it is important to ensure that the principles of transparency and honesty in politics are constitutionally and legally guaranteed.

29 Erdoğan, p. 29.

In order to strengthen the representative capabilities of the TGNA, the following suggestions should be considered:

- At a time when the phenomenon of change is felt on a global scale, in a young, dynamic and active society like Turkey, holding the TGNA elections every five years (art. 77/1) is not the right choice as it weakens the power of representation of the Assembly. The five-year period in the pre-amendment text of the 1982 Constitution, reflecting the "less democracy" understanding of the legislator, was changed to four years in 2007 on the grounds that it did not comply with the realities of social and political change. With the 2017 constitutional amendments, this period was again increased to five years. In order to strengthen the relationship of representation, ongoing sociological changes and the will of the people must be reflected in politics as quickly as possible; as such, it would be suitable to reduce this period of renewal to four years. It is clear that a parliament that adapts to social changes, and is renewed accordingly, would have a much more dynamic and much stronger representation.

The legislation concerning political parties should be rearranged within the framework of the principles of participation, pluralism, transparency, auditability and accountability.

- Unfortunately, it is difficult to say that political parties (art. 68/2), defined by the Constitution as "indispensable elements of democratic political life", meet this definition considering their activities, work, internal functioning and decision-making procedures. Political parties in Turkey are known to be hierarchical organizations in which the leadership role is all-powerful; participation in intra-party decision-making processes is limited; parliamentary candidates are determined by central polling (usually by the party chairman); and pluralism, transparency, accountability and auditability are very weak. The representative power of the Grand National Assembly of Turkey, in which political parties with such characteristics are represented, would be accordingly weak, and its prestige and reliability would be low. For this reason, one of the first things to be done should be to subject the regime of political parties to a radical revision.

- The legislation concerning political parties should be rearranged within the framework of the principles of participation, pluralism, transparency, auditability and accountability. Intra-party democracy should be made functional. Participation should be based on the determination of the governing bodies of the parties at all levels. In particular, primary elections should be introduced in the determination of the parliamentary candidates, with the exception of a quota to be given to the party headquarters at a certain rate.

- The financing of politics should be regulated within the framework of the principles of transparency and auditability. It should be obligatory to disclose to the public all donations made to political parties and candidates over a certain amount, as well as the expenditures made during election periods. Financial au-

diting of political parties should be left to the Court of Accounts instead of the Constitutional Court, as it is a matter that requires expertise.

- A Political Ethics Committee should be established before the TGNA to determine the political ethical principles that members of the Assembly must comply with, and to examine applications regarding violations of the ethical rules.
- The prohibitions in the fourth part of the Political Parties Law, titled "Prohibitions Regarding Political Parties" and which are unacceptable in terms of political party freedom, should be removed. Considering Turkey's experiences, the sanction of closing political parties must be abolished. If there is insistence on the continuation of the party closure sanction, the case law developed by the European Court of Human Rights regarding the regime of dissolution of political parties and the views of the Venice Commission should be taken into account.
- In order to increase the representative power of the TGNA, changes should be made in the electoral system and the "single-member district majority system" should be adopted. The position and weight of the deputies, elected according to this election system, would be strengthened both against the party administration and in the Grand National Assembly of Turkey. In this way, the representative capacity of the TGNA would be enhanced.
- In order to ensure conditions of fair competition among political parties and to strengthen pluralistic politics, treasury aid should be provided to political parties that received at least 1% of the votes in the last parliamentary election.

The TGNA's track record in legislative activities, which was not very bright before the 2017 constitutional amendments to begin with, got worse with the entry into force of the new government system (the Presidential System of Government).

2. Making Legislation More Effectual and Democratic

The TGNA's track record in legislative activities, which was not very bright before the 2017 constitutional amendments to begin with, got worse with the entry into force of the new government system (the Presidential System of Government). As stated in the European Union's 2021 Turkey Report, "The Presidential system has greatly weakened the legislative and supervisory functions of the TGNA. The President continued to wield broad legislative powers and to restrict the legislative role of Parliament with Presidential decrees and resolutions regulating key policy areas. Policy discussions regulating inter-party agreement were rarely held (...) Opposition parties were not effective in parliamentary discussions. Consensus has rarely been reached in Parliament on key public policy discussions that require inter-party agreement."[30]

30 For the EU 2021 Turkey Report, see https://www.ab.gov.tr/siteimages/birimler/kpb/2021_turkiye_raporu_tr.pdf (Date of Access: 14.10.2022).

The majority of the articles of law prepared from the 27th Term 1st Legislative Year, when the Presidential System of Government entered into force, until the 27th Term 6th Legislative Year and after, consist of "omnibus bill" articles that pose problems concerning participation, discussion and negotiation processes, and are therefore very low in terms of legislative quality.[31] Such omnibus bills contain an assortment of regulations on issues that are unrelated to each other, making additions and amendments to many different laws, and therefore contradict the principle of "unity of subject in laws". They are accordingly difficult to follow, eliminating the possibility of systematic interpretation. In sum, implementation of the omnibus bill eliminates the negotiation process, paralyzes the legislative role of the TGNA and renders the Assembly dysfunctional.

It is known that there are serious problems in the processes for drafting and negotiating laws in the Turkish Grand National Assembly, and especially in the role of the opposition parties in these processes. The participatory method has been largely neglected, and the opposition parties have been rendered ineffective. Law proposals are prepared directly by the executive, not by running participatory processes in the TGNA, and they are accepted and enacted with the votes of the ruling bloc (AK Party and MHP) in the Assembly, rejecting recommendations for amendment made by the opposition parties. In this context, the legislative activity is seemingly limited to an "approval activity".[32]

The legislative activity is seemingly limited to an "approval activity".

The special commissions of the Grand National Assembly of Turkey, where law proposals are discussed and matured in depth, are not effective and do not properly fulfil the functions expected from them. The fact that the ruling bloc holds the majority in these commissions, and that the chairman and vice chairman of the commission belong to the ruling party, prevents the commissions from meeting the criteria for participation and consideration of needs.

In order to enhance the role of the TGNA as legislator and to democratize the legislative processes, the following steps must be taken:

- In order to overcome the representative deficit and crisis experienced by representative democracy, it is a necessity to use tools which envisage the direct participation of the people in the use of power. Within the new parliamentary system model, those rights envisaging the direct participation of the people in the legislative process should be enshrined in the constitution. In this context, the right of the people to propose a law

31 See https://www.tbmm.gov.tr/yasama/kanun-teklifleri (Date of Access: 14.10.2022).

32 Checks and Balances Network, Presidential Government System Towards 2021: Legislative and Executive, https://www.dengedenetleme.org/dosyalar/file/CHSde-Yasama-ve-Yurutme-Raporu-2021.pdf (Date of Access: 14.10. 2022).

by collecting a certain number of signatures and to take the laws passed by the Grand National Assembly to a referendum should be recognized.

- A new Parliamentary Rules of Procedure should be prepared in order to ensure participation and pluralism in the debate of law proposals and drafts in the TGNA, and in particular to ensure the effective participation of opposition parties in the legislative processes. The rules of procedure to be prepared within this framework should include necessary arrangements so that opposition party groups and non-group deputies can effectively exercise their right to speak in the debate on law proposals and drafts in the Assembly. The principle of amending the Parliamentary Rules of Procedure, which regulate the working principles of the TGNA and therefore are vital for the relations between the government and the opposition, should be accepted with a qualified majority. By adopting this proposal, it will be ensured that changes to the Rules of Procedure are carried out with as much consensus as possible.
- It should be mandatory to consult the opinions of non-governmental organizations, professional organizations, experts and public institutions that are related to the subject of the bill or draft law, during the deliberation on the law proposals and drafts in the respective commissions.
- The "omnibus bill" practice – which renders the TGNA dependent on the executive and otherwise dysfunctional, makes participation in legislative activities ineffective, and creates difficulty in seeking to know the laws – should be abolished.
- One of the requirements for increasing the effectiveness of the TGNA in legislative activities is that it must have sufficient expert staff. Considering the fact that in the functioning of the parliamentary system, most of the texts enacted are draft laws and prepared by expert bureaucrats within the ministry, it is understood how important it is to strengthen the expert capacity of the TGNA. In this framework, the TGNA should be reinforced with the expert staff it needs in order to carry out an effective legislative activity. In addition, the technical capacity of the commissions should be strengthened. At the same time, a mechanism should be established to provide support services to the deputies in order to ensure that they can fulfil their essential duties properly.

One of the requirements for increasing the effectiveness of the TGNA in legislative activities is that it must have sufficient expert staff.

- The principle of live broadcast, by any means, of open debates in the TGNA should be recognized without exception. Thus, it will be ensured that the public is aware of all legislative activities, and the public's supervision of the TGNA will become more effective.
- The president's veto power, which weakens the legislative function of the Assembly and causes delays in the issuance of laws, should be abolished. In order to serve this purpose, the Constitution before the 2017 amendment may be taken as a basis, and alternately, the power to send the law back to the Parliament for the second time may be withheld from the president.
- The authority to issue decree-laws to be given to the Council of Ministers by the TGNA, as well as the decree-laws to be issued within the framework of this authority, should be subject to strict conditions. In this context, it should be accepted that the TGNA can only authorize the Council of Ministers to issue a decree in important, urgent and compulsory situations. It should be stipulated that the law of authorization should show the subject, purpose, scope, principles and validity period of the decree to be issued, and whether more than one decree was issued within this period. It should be clearly stated that apart from social and economic rights, fundamental rights and freedoms cannot be regulated by decree. In addition, it should be stipulated that if the statutory decrees entered into force and submitted to the Grand National Assembly of Turkey are not discussed and decided upon in the Parliament within a certain period of time, the decrees will automatically be repealed at the end of the required period.

Legislative immunity should be rearranged in order to enable deputies to carry out their legislative activities freely and independently.

- Legislative immunity should be rearranged in order to enable deputies to carry out their legislative activities freely and independently. The bitter experiences that Turkey has had in the past, and is still going through, reveal how essential it is to protect the opposition deputies against the parliamentary majority. For this reason, the exception related to Article 14 of the Constitution and specified in paragraph 2 of Article 83, which is open to arbitrary use, should be abolished. However, the scope of immunity should be limited to exemption from arrest and detention; that is, parliamentary membership should not constitute an obstacle to criminal investigation and reconciliation.

3. Making the TGNA's Supervisory Function More Effective

One of the main functions of parliaments is to oversee the executive. This function constitutes one of the indispensable requirements of a pluralist democracy based on the rule of law and human rights. In government systems based on the separation of powers, parliaments are equipped with various mechanisms to ensure balance and control over the executive.

Considering the historical experience in Turkey, we see that the periods in which the TGNA has had the power to supervise the executive correspond to – are limited to – the interim periods when democracy worked relatively well. In general, in Turkey, where the over-disciplined party tradition and the understanding of majoritarian democracy are both powerful, it has not been possible for governments that have the parliamentary majority behind them to be effectively supervised by the Grand National Assembly of Turkey. Especially after 1982, when the legislature was weakened as a constitutional choice over the executive, Parliament's oversight of the executive remained very limited. With the 2017 constitutional amendment, the supervisory function of the TGNA was further weakened, and accordingly, the understanding of transparent and accountable administration was swiftly abandoned. With the aforementioned constitutional amendment, although parliamentary inquiry and general debate were preserved, the oral question, which is one of the most effective instruments of supervision, was abolished, and parliamentary investigation was made difficult to use. Thus, the supervisory function of the Assembly was rendered significantly ineffective.[33] In the reports published by the EU, especially after the new government system came into force, there are very extensive assessments on the point that the executive cannot be supervised by the TGNA.[34]

Especially after 1982, when the legislature was weakened as a constitutional choice over the executive, Parliament's oversight of the executive remained very limited.

The following suggestions should be taken into account in order for the TGNA to supervise the executive effectively:

- In order to improve the information-gathering and supervisory power of the Assembly, the oral question that was removed with the 2017 constitutional amendment should be re-adopted. Measures should be developed to ensure the effec-

33 Checks and Balances Network, Presidential Government System Towards 2021: Legislative and Executive, https://www.dengedenetleme.org/dosyalar/file/CHSde-Yasama-ve-Yurutme-Raporu-2021.pdf (Date of Access: 14.10. 2022).

34 For example, the EU's 2021 Turkey Report includes the following assessment regarding the supervisory function of the TGNA: "The presidential system has adversely affected the functioning of government organs and state administration. The President's political accountability is limited to elections due to the lack of an adequate balance and monitoring mechanism (…) The parliamentary supervision of the executive is still very weak. The Parliament still lacks the necessary tools to ensure the accountability of the government. Deputies can only pose written questions to cabinet members. They cannot pose a question to the President. Presidential Decrees continue to be exempt from parliamentary scrutiny. (…) The legal framework has allowed political pressure to be exerted on regulatory institutions. Most regulatory agencies are directly subordinate to the Presidency, and the President has the power to appoint the heads of most public regulatory agencies. During the reporting period, the President dismissed the Central Bank Governor twice." https://www.ab.gov.tr/siteimages/birimler/kpb/2021_turkiye_raporu_tr.pdf (Date of Access: 14.10.2022).

tive use of written and oral questions, on the one hand, and to prevent their abuse, on the other. In this context a numerical limitation may be imposed on deputies' verbal and written questions. In addition, it may be stipulated that the questions should be short, related to the government's area of responsibility, and not include off-topic observations and evaluations. Oral and written questions must be answered within a certain period of time. If no answer is given within the specified time, it should be ensured that the questions are published on the Parliament TV and/or in the Official Gazette.

- The "government question", which is implemented as one of the tools of the Bundestag to supervise the government in Germany, might be adopted as an effective and functional control tool. After the weekly meeting of the Council of Ministers, the deputies may be given the opportunity to ask questions about the content of the cabinet meeting and current issues to the members of the Council of Ministers, for a limited period of time.

- It would be appropriate to put an end the requirement that approval of a general meeting proposal is dependent on the will of the majority in the TGNA. In this context, within the framework of certain conditions, a general meeting can be opened upon the application of the main opposition party with a group in the Parliament. In this way, the Assembly will become a "negotiation environment" where opposition parties can make their voices heard and the problems of the people are discussed and debated.

The censure motion, which is one of the parliamentary instruments for overseeing the government, should be re-adopted.

- The principles of the general meeting should also apply to the opening of a parliamentary inquiry. In order to make parliamentary research an effective control tool, parliamentary research commissions must be strengthened and a budget must be allocated for their work. For the same purpose, the work of experts and academics should be provided within such commissions. More importantly, it should be made obligatory for all public institutions and organizations to provide the information and documents requested by the commissions, and to comply with their calls.

- The censure motion, which is one of the parliamentary instruments for overseeing the government, should be re-adopted. However, while doing this, two concerns must be reconciled. While drafting a censure motion, care should be taken not to fall into governmental instability on the one hand; and on the other hand, it should be ensured that it is an effective tool for supervision of the government. It can be envisaged that this mechanism is to be combined with a "constructive vote of no confidence" so that the censure motion does not lead to governmental instability. In order for the censure motion to function as supervision, even partially, it may be necessary to envisage a motion of no confidence which will be submitted by at least one third of the total number of members of the TGNA in

order to be placed on the agenda. Thus, it is ensured that the issue constituting the subject of the censure motion is discussed in the Grand National Assembly of Turkey, and the public is informed.

- The "parliamentary investigation", which has been rendered almost impossible by the current constitutional regulation, should also be reorganized and made an effective means of parliamentary supervision.
- It should be possible for the TGNA to supervise not only the political wing of the executive, but also all institutions and organizations, especially those related to security, intelligence and foreign policy.
- Democracy has developed as a political regime in which citizens, who provide the financial resources the executive needs for the policies it pursues, may question where and how these resources are spent. For this reason, the parliamentary right to the budget is of vital importance in democracies, as an area where the relationship between accountability and oversight is embodied. However, with the 2017 constitutional amendment, the Parliament's right to budget was taken away. The budgetary right that belongs to the Assembly should be recognized as an inalienable power, without any limitations or exceptions. The powers of the TGNA over budget preparation and control should be strengthened. The Court of Accounts, which uses its auditing power on behalf of the TGNA, should be enabled to fulfill its duties effectively.
- According to the current Constitutional provision (art. 116/2), the president alone can decide to renew the parliamentary elections. It is very difficult for the deputies to supervise the executive effectively in an Assembly where the mandate can be terminated by decision of the president. Therefore, the power to renew the elections should belong only to the TGNA. However, in order not to leave this authority to the initiative of the ruling group alone, it would be appropriate to bind the decision to renew the elections to the condition of a qualified majority.
- The Ombudsman Institution (art. 74/4, 5,6), which is subordinate to the Grand National Assembly of Turkey and regulated as a constitutional institution in order to examine complaints about the functioning of the administration on behalf of the Assembly, is unable to fulfil its function properly, due to the method of election of the Chief Ombudsman. Therefore, the institution needs to be restructured in order to ensure its effectiveness and functionality. The "Ombudsman Board" to be formed for this purpose should be brought to a pluralistic structure, a qualified majority should be sought in the election of the members of the Board, or alternately, the political parties represented in the TGNA should be given the right to elect members according to their representation ratios.

It is very difficult for the deputies to supervise the executive effectively in an Assembly where the mandate can be terminated by decision of the president.

B. MAKING THE EXECUTIVE STABLE AND ACCOUNTABLE

In the parliamentary system, the executive branch has a two-winged structure. One of these wings is the head of state, and the other is the cabinet (government) consisting of the prime minister and his ministers. The head of state can be a person who has come to power by succession, such as a king or queen, or it can be a person elected by the parliament. The head of state, no matter how he comes to office, has no political responsibility as he has no real executive powers. For this reason, the transactions made by the head of state are signed by the relevant minister and the prime minister in accordance with the "counter-signature" rule.[35]

It is important that heads of state do not have executive powers that will require political responsibility, so that they may fulfil the role of the impartial arbitrator expected from heads of state in parliamentary systems. In cases such as the emergence of extraordinary developments, political turmoil and crises, the heads of state, who represent the unity of the state and the nation, try to solve problems and overcome crises by fulfilling their role as a conciliator between state bodies and political actors. In order to fulfill this vital function, heads of state must be impartial. The head of state, who should be in the role of arbitrator and impartial, should not have strong powers.[36] In order to ensure the impartiality of the head of state, there is no need to make legal arrangements in monarchies, while constitutional measures are taken in regimes based on the republican principle.

Parliamentary systems have the flaw of the potential to give rise to weak and unstable governments.

The council of ministers, which constitutes the second wing of the executive in parliamentary systems, is a collective body that uses executive powers and is responsible to and accountable to the parliament for these powers. The appointment and continued service of the council of ministers is subject to the approval of the parliament. The mechanism that provides this is the vote of confidence.

Parliamentary systems have the flaw of the potential to give rise to weak and unstable governments. In order to prevent the emergence of this weakness and to provide power and stability to the government, certain methods have been developed within the framework of the "rationalized parliamentarism" approach. In this context, means such as limiting the right to issue a motion of no confidence, seeking the absolute majority of the total number of parliamentary members in the vote of no confidence, stipulating cooling-off periods and constructive votes of no confidence are envisaged.

In proposing a new parliamentary system model for Turkey, the basic features of the parliamentary system and the lessons to be drawn from Turkey's own parliamentary

35 Mehmet Turhan, Hükümet Sistemleri, Gündoğan Yayınları, Ankara, 1993, p. 51.

36 Yusuf Hakyemez, "Hükümet Sistemi Arayışları ve Yeni Anayasa", Demokratik Anayasa: Görüşler ve Öneriler (Prepared by: Ece Göztepe ve Aykut Çelebi), Metis Yayınları, İstanbul, 2012, p. 297.

system experience should be taken into account. Looking at the Turkish experience, the supremacy of the executive over the legislature, the tendency for power to concentrate in the executive, the internal tensions experienced by the executive and the instability of the government are noteworthy in particular. The new model should aim to overcome the problems experienced by Turkey in the past. In this context, in addition to the recommendations for strengthening the TGNA, in order to prevent the concentration of power in the executive, recommendations such as sharing the powers of the central government with strengthened local governments on the one hand, and securing the independence of regulatory and supervisory institutions on the other hand, should also be taken into consideration. Also, measures should be taken to prevent the duality that has emerged in the executive, in the form of the president and the council of ministers, from turning into a source of tension and conflict. Finally, the tools of rationalized parliamentarism should be used in order to prevent government instability, which is one of the most prominent weaknesses of the parliamentary system.

In this framework, recommendations regarding the executive body in the new parliamentary system model, and the public administration, which is a part of the executive, are as follows:

The powers of the president should be rearranged by taking into account the rule of parallelism of authority and responsibility.

- In line with the tradition of the parliamentary system, the executive should be two-winged and consist of the president and the cabinet of ministers, which consists of the prime minister and his ministers.
- It would be appropriate to adopt the election of the president by the Grand National Assembly of Turkey in order to prevent the duality of the executive branch and the confusion of authority that may result from the direct election of the president by the people. However, when making a decision on this issue, the political consequences of the deprivation of this power given to the public should also be taken into account.
- In order to ensure the principle of impartiality, which is a requirement for the president to fulfil the conciliatory role expected from the head of state in classical parliamentary systems, it should be stipulated that the president will be elected for a term of seven years, that he will serve for a maximum of one term, that he will be dismissed from his party, if he has any, and that his membership in the Turkish Grand National Assembly will end.
- The powers of the president should be rearranged by taking into account the rule of parallelism of authority and responsibility. In this context, only symbolic and ceremonial powers should be given to the president. The actions to be taken by the president single-handedly should be enumerated in the constitution, and it should be stipulated that these actions will be signed by the relevant min-

ister and the prime minister as per the counter-signature rule. The president, who does not have executive powers, will also have no political responsibility. However, the political irresponsibility of the president will not be an obstacle to his civil and criminal liability. The principles regarding the civil and criminal liability of the president will be regulated in the constitution.

- It is possible to make two different proposals regarding the appointment of the council of ministers, which constitutes the second wing of the executive. The first is the method of appointing the prime minister from among the members of the Turkish Grand National Assembly by the president, in accordance with the tradition of the classical parliamentary system. In the implementation of the Turkish parliamentary system, the president appointed the deputy, who was the leader of the political party that held the majority in the Parliament, as the prime minister, and the names determined by him as ministers. However, this procedure provided the president with a wide room for manoeuvre in cases where there was no single-party majority in the Assembly, and in this area, the presidents from time to time misused this authority granted to them. In order to prevent the misconduct of the president in appointing the prime minister, it might be taken under constitutional provision that the president will give the task of forming the government to the leader of the political party with the greatest representation in the Parliament. The second proposal is the method of electing the prime minister by the Grand National Assembly of Turkey. Including the names of the ministers who will take part in the cabinet, as well as the prime minister, in this election will strengthen both the effectiveness of the TGNA and the democratic legitimacy of the council of ministers.

In order not to cause governmental instability, the establishment of governments should be facilitated and their removal should be made more difficult.

- Ministers can be determined by the prime minister from among the members of the Grand National Assembly of Turkey or, if necessary, from among those who are qualified to be elected as members of parliament. The council of ministers should be chaired by the prime minister. The president's presidency of the council of ministers should only be accepted in exceptional circumstances.
- The actual executive powers regarding the executive function will be exercised by the council of ministers, which has political responsibility to the TGNA. In accordance with the principle of parallelism of authority and responsibility, the individual and collective responsibility of the prime minister and ministers to the TGNA will be accepted.
- In order not to cause governmental instability, the establishment of governments should be facilitated and their removal should be made more difficult. In this context, regarding the vote of confidence, the rule of simple majority in the establishment of governments and the rule of qualified majority in the overthrow of governments should be accepted.

- In order to preserve the stability of the government, a "constructive vote of no confidence" should be used in the vote to be held after the decision to include a motion of no confidence in the agenda, in order to overthrow the council of ministers. The abolition of the council of ministers should be conditional on the Parliament nominating a new candidate for prime minister with an absolute majority of the total number of members.
- The state of emergency administration should be regulated as a legal regime. In this context, emergency decree-laws should be abolished and the regulations required by the state of emergency should be left to the purview of the law. The power to declare a state of emergency should be exclusively vested in the council of ministers. The periods envisaged for the state of emergency should not be long, and should be kept as short as possible.
- A general arrangement should be made in the constitution regarding "regulatory and supervisory institutions" in order to prevent the concentration of executive power in a single centre, and to ensure balance and supervision within the executive. In order to ensure the regular, efficient and lawful functioning of the sectors related to social, economic and cultural fields, the administrative and financial autonomy of the "regulatory and supervisory institutions", which have the authority to set rules, authorize, regulate and supervise, should be constitutionally guaranteed, and these institutions should be brought into a pluralistic structure. In this framework, the method of election of the members of the relevant institutions by the General Assembly of the TGNA, based on the number of members of the political party groups in the Grand National Assembly of Turkey, should be adopted.
- Local governments must be strengthened in order to prevent the concentration of power in the central administration and thus to create a balance against the central authority and to make participation and decentralization meaningful. The tutelary authority of the central administration over local governments should be abolished; the supervision of local governments should be limited to ensuring their compliance with the law. Administrative and financial autonomy of local governments should be constitutionally guaranteed. Transferring some of the powers of the central authority to local governments and sharing power would be the right choice for Turkey in this regard.

Regardless of the type of government system, the independence and impartiality of the judiciary is an indispensable and fundamental principle in democratic constitutional systems.

C. MAKING THE JUDICIARY INDEPENDENT AND IMPARTIAL

Regardless of the type of government system, the independence and impartiality of the judiciary is an indispensable and fundamental principle in democratic constitutional systems. For this reason, the classification of government systems is based on the relationship between the legislative and executive organs. It is assumed that the judiciary is already or should be distinct from these two powers.

Jurisdiction in pluralist democracies based on the rule of law and human rights is left to impartial judiciary organs, which are independent of all centres of power, especially the legislature and the executive. The fundamental requirement of the principle of separation of powers and accordingly the "balance and control" system is to prevent excessive concentration of power in the legislature and/or executive through judicial review. On the one hand, the judiciary is equipped with the armour of independence in order to determine whether the legislative and executive organs have exceeded their own constitutional limits and to ensure a balance between them; and on the other hand, to protect individuals against the arbitrary acts of both organs.[37] A judiciary equipped with the Armor of independence also facilitates the healthy functioning of the parliamentary system.[38]

It is not possible to talk about a fully independent judiciary in almost any period of the history of the Republic. In the tutelary system that was in effect for a long time in Turkey, the judiciary functioned as a tool for the state power to keep the political power under control, in line with its ideological priorities. After the liquidation of the tutelary system, the judiciary, freed from the grip of the state power, was transformed into an apparatus directed by the political power. The political power, which took on an oppressive and authoritarian character, used the judiciary as a convenient tool to silence social and political opposition, making the judiciary dependent on the political power to a large extent.

The trend of regression in the field of judicial independence, which became evident after 2015, gained momentum especially with the 2017 constitutional amendments.

The trend of regression in the field of judicial independence, which became evident after 2015, gained momentum especially with the 2017 constitutional amendments.[39] In fact, the judiciary was already a dependent element of state power and/or political power to a large extent prior to these dates. However, the new government system and the way it was implemented caused this dependent structure of the judiciary to be given a normative meaning and the *de facto* situation to become normalized.

Despite the mandatory provisions in the Constitution, the decisions of the European Court of Human Rights and the Constitutional Court are resisted by the courts of first instance. Investigations are initiated, lawsuits are filed, and arrest and conviction decisions are made against dissident figures targeted by those in power. Moreover, the files of those who have been sentenced are reopened, and acquittal decisions are made. The president and members of the Constitutional Court are threatened by politicians, and threatening statements are made to the effect that

37 Fazıl Hüsnü Erdem, "Türkiye'de Yargının Hukuk Ötesi Sorunları", Dicle Üniversitesi Hukuk Fakültesi Dergisi, Vol 24, No 40, 2019, p. 10.

38 Erdoğan, p. 32.

39 Checks and Balances Network, Presidential Government System Towards 2021: Judiciary, Analysis Report, November 2020, p. 2.

the Constitutional Court should be closed down. Judges who make decisions that those in power do not like are dismissed or their places of duty are changed. On the contrary, judges who act in accordance with the expectations of the government, not as ordered by law, are rewarded. Appointments to high judicial positions are based on loyalty and obedience, not merit.

This dire picture in the field of the judiciary stems from the will of the political power to create a judiciary that is subordinate to itself, and the pressure it exerts on the judiciary to ensure this, rather than the inadequacy of the members of the judiciary and/or the absence of constitutional and legal guarantees regarding the independence of the judiciary. In Turkey, the judiciary has a problem of "*de facto* independence", rather than "*de jure* independence". Legal guarantees regarding the independence of the judiciary in Turkey are ahead of most established democracies. Despite this, very serious problems are experienced regarding the independence of the judiciary in Turkey, and these are due to the attitude of the political power, among other factors. Although the basic principles regarding the independence of the judiciary in Turkey are guaranteed at the constitutional and legal level, it should be noted that some regulations in positive law allow for the intervention of the executive in particular, and its guidance of the judiciary.

Appointments to high judicial positions are based on loyalty and obedience, not merit.

Regarding the root cause of Turkey's problems with judiciary independence, while the efforts of the political powers to make the judiciary a mere tool for realizing their own political goals and giving them apparent legal legitimacy play an important role, it is also a fact that there are gaps in our positive law that allow such efforts to be successful. In particular, it would be suitable to make the following recommendations regarding the constitutional and legal regulations that enable the executive to intervene in the judiciary:

- Admission to judgeship candidacy and admission to the profession of judge are complementary processes, and therefore the existing regulation that separates appointment to the status of candidacy and appointment to the status of judge, authorizing the Ministry of Justice in the former and the HSK (Hakimler ve Savcılar Kurulu, Council of Judges and Prosecutors) in the latter, should be abandoned, and the Board of Judges should be authorized to appoint to both positions. In the interview conducted in the selection of judge candidates, a transparent method should be adopted in order to avoid subjective evaluations. In this context, the interview should be recorded in written, audio and visual formats. In order to ensure the objectivity, fairness and legitimacy of the interview, the Interview Board should be diversified, and should be given a pluralistic structure. The majority of the members of the Board should be determined by the Board of Judges, while the other members should be determined by the universities, the Union of Turkish Bar Associations, the Justice Academy of Turkey and the Ministry of Justice.

- The existence of an independent high judicial council, which has the power to decide on the personal affairs of judges and prosecutors, is of great importance in terms of the guarantee of judgeship and the independence and impartiality of the judiciary. Considering that judges and prosecutors have different duties and positions in the judicial system and that their relations with the administration differ, it would be better to establish a separate committee for each professional group. In this framework, a separate high judicial council (a High Council of Judges and a High Council of Prosecutors) should be established for each professional group. As a result, the appointment of judges to the profession of prosecutor and prosecutors to the profession of judge would also be prevented.

- In the formation of the "Council of Judges", it should be ensured that it is diversified in terms of the selecting authorities and the elected members, and that it has a pluralistic structure. The democratic legitimacy of the Council would be thus strengthened. As stated in a number of international documents regarding the structuring of judicial councils, the majority or at least half of the members of the Council should comprise judges elected by their colleagues in a way that ensures the widest representation of the judiciary. In addition to the members of the Court of Cassation and the Council of State, judges serving in the courts of first instance and appeal should also be represented on the Board. The non-judge members of the Council, which will be mixed in composition, should be elected by the Grand National Assembly of Turkey, taking into account the representation rates of the political parties in the Assembly. In addition, by stipulating that the candidates to be elected by the Grand National Assembly of Turkey will be interviewed openly, it should be ensured that on the one hand, the candidates are sufficiently recognized by the public and on the other hand, qualified candidates are elected. By not including the Minister of Justice and the Undersecretary of the Ministry of Justice in the Council, the risk of the executive's intervention in the judiciary should be eliminated. However, the Minister of Justice may be granted the right to attend Board meetings without voting rights, excluding meetings involving investigation or disciplinary matters, given that he is responsible for the country's policy of justice and the delivery of justice services. Finally, the Board's disciplinary and dismissal decisions should be subject to judicial review.

In the formation of the "Council of Judges", it should be ensured that it is diversified in terms of the selecting authorities and the elected members, and that it has a pluralistic structure.

- Taking into account the requirements of the profession of the prosecutor, and the principle of political responsibility in the conduct of justice services, a pluralistic "High Council of Prosecutors" should be formed, consisting of members appointed from diverse sources. It is acceptable that the Chairman of the Council be the Minister of Justice and that the Undersecretary of the Ministry of Justice be a natural member.

- In order to ensure the guarantee of judgeship and the independence of the judiciary, it should be ensured that the judge cannot be appointed to another court without his consent until he retires from the court where he was appointed. In addition, the provision in the current Constitution (art. 140/5) that judges are subordinate to the Ministry of Justice in terms of their administrative duties should be abolished.
- The authority granted to the Minister of Justice by the Constitution to appoint judges to work temporarily or permanently in the Ministry of Justice (art. 159/12) is problematic in terms of judicial independence. Although this power is conditional upon the consent of judges, it has the potential to allow the executive to influence and control the judiciary and to interfere with the individual independence of judges. Therefore, decisions regarding the appointment of judges to the Ministry of Justice should be made by the High Council of Judges, provided that the consent of the judges is obtained and upon the request of the Ministry of Justice.
- The provision in article 82/1 of the Law on Judges and Prosecutors No. 2802, which states that "the examination and investigation of judges and prosecutors due to their crimes arising from their duty or committed during their duty, and their attitudes and behaviors that do not comply with the requirements of their titles and duties, are subject to the permission of the Ministry of Justice", is a provision that may cause judges to feel pressured. This power, which is open to abuse by the Minister of Justice, should be abolished for judges and the relevant power should be handed over to the Council of Judges.
- Again, the provision of Law No. 2802 states that "the Minister of Justice has the right to monitor judges and prosecutors, except for the duties related to the exercise of judicial power" (art. 5/3). Although this article does not mention supervisory powers, it should be noted that supervision is an inevitable outcome of monitoring. There is always the possibility that the authority empowered to monitor may shift to supervision. For this reason, the provision of the relevant article should be abolished as concerns judges, and this authority should be given to the Council of Judges.
- The power of the Ministry of Justice to supervise prosecutors in terms of their administrative duties should be terminated, and this power should be given to the Council of Prosecutors. At the same time, in order to prevent the executive from interfering with the judiciary through law enforcement in criminal proceedings, a judicial law enforcement agency under the Office of the Chief Public Prosecutor should be established.

In order to ensure the guarantee of judgeship and the independence of the judiciary, it should be ensured that the judge cannot be appointed to another court without his consent until he retires from the court where he was appointed.

- The defence profession (lawyers), which fulfils the duty of representation in the exercise of the rights of citizens to seek and defend their rights before the judiciary and administrative authorities, should be constitutionally regulated and guaranteed. Emphasis should be placed on the independence of the defence profession and its constitutive role in the judiciary. It should also be clearly stated that no legal regulation or application that would violate the principle of equality of prosecution and defence authorities may be made. In addition, as with the professional organization of lawyers, the independence of bar associations from the executive body should be ensured. Finally, the current multi-bar system should be abolished, as it has the potential to enable the interference and influence of the executive in the bar associations, to undermine confidence in the defence profession and to therefore undermine the independence of the judicial function.

- The effectiveness, efficiency and independence of the Constitutional Court, which is one of the major assurances of a liberal and pluralist democracy, should be strengthened. Considering the workload of the Court, it would be beneficial to increase the number of members and departments, and to determine the duties and jurisdictions of the departments and the General Assembly of the Court. It should be ensured that its members are selected from diverse sources, that the composition of the members is diversified, and that the Court has a pluralistic structure. It is important to strengthen the democratic legitimacy of the Court by stipulating that at least half of the members are to be elected by the TGNA. Giving the political parties with a group in the TGNA the right to elect members according to their representation rates will ensure that social and political pluralism is represented in the Court. For the purpose of selecting qualified members, it should be envisaged that candidates be interviewed publicly.

The Supreme Election Council should be organized as a high court.

- The Supreme Election Council should be organized as a high court. Its current structure, which consists only of members of the judicial profession, should be changed; in addition to those who belong to the profession of judge, it should be ensured that faculty members and senior administrators related to the field of duty of the Supreme Election Council may be elected as members of the Council. In order for the Council to assume a pluralistic structure, the political parties represented in the TGNA should be given the right to elect members according to their representation rates. In addition, it should be stipulated that the candidates to be elected to the Council will be publicly interviewed.

- In order to increase the quality of the high judiciary, it should be made compulsory to seek objective criteria for being elected as a member of the Court of Cassation and the Council of State. The authority to elect the Chief Public Prosecutor and Deputy Chief Prosecutor of the Court of Cassation should be taken from the president and given to the members of the Court of Cassation. Consid-

ering the scope of duty of the Council of State, the principle that one fourth of its members are elected by the Council of Ministers should be accepted.

- The Court of Accounts, which exercises its auditing power on behalf of the TGNA, should be organized as a high court. No institution or organization using public funds should be excluded from audit by the Court of Accounts. The Court of Accounts, like other high courts, should be diversified in terms of both the source of its members and the appointing authority, and it should be given a more pluralistic structure. Political parties represented in the Grand National Assembly of Turkey should be given the authority to elect members according to their representation ratio, and it should be accepted that the members to be elected will be interviewed publicly.

V. GENERAL EVALUATION

After the transition to multi-party political life in Turkey, there was an incomplete and guided democracy in general, leaving aside the limited intervals in which the requirements of a pluralist and liberal democracy were relatively well met. In Turkey, where the fabric of the political system is monist, centralist, tutelary, majoritarian and oppressive, the parliamentary government system was held responsible for the problems experienced due to some other factors (economic, social and cultural), and especially the basic features of the political system. This reductionist approach, common in centre-right and conservative parties, has led to lively debates on the system of government with each new constitution-making process, and the search for new constitutions and/or constitutional amendments. In essence, the centre-right and conservative party leaders, who saw that they would not be able to be rise to power in the tutelary system that remained in effect for a long time, defended the semi-presidential or presidential system, which they saw as a requirement for an exit, or liberation from this system. They thought that in order to get rid of the tutelary system, it was necessary to abolish the parliamentary system.

The executive power before the parliament and the presidency within the executive were strengthened.

Before 1980, in the search for a new constitution by centre-right politicians and civilian actors, the demand for a model in which the executive was strengthened against the parliament within the semi-presidential system or the parliamentary system became prominent. In the new constitution made after the 1980 military coup, the second option was accepted. The executive power before the parliament and the presidency within the executive were strengthened. The crises created by the duality in the executive accelerated the search for a new government system. During this period, for the first time, demands for transition to a semi-presidential or presidential system were voiced by presidents (Turgut Özal and Süleyman Demirel) who belonged to centre-right political traditions. Recep Tayyip Erdoğan, the leader of religious-conservative politics, clearly expressed his demand for a presidential system, which he had hesitantly voiced before, with the text of the proposal submitted by the AK Party to the Constitutional Reconciliation Committee, which served between

2011 and 2013. Taking advantage of the opportunity presented to him by the extraordinary conditions after the 15 July 2016 coup attempt, Erdoğan achieved the new government system he dreamed of with the 2017 constitutional amendment, thanks to the support of Devlet Bahçeli, with whom he entered into an alliance.

With the entry into force of this new government system, first called the "Turkish Type Presidential System" and later the "Presidential Government System", the crisis situation that deepened and spread to all areas of social life led to questioning and criticism of the new government system at a very early stage. In fact, the arbitrary style of governance based on one-man rule and the problems caused by it started before the new government system had even come into effect. The problems related to all areas of life deepened, became widespread and turned into a crisis, with the entry into force of the new system. Although it is not right to blame the new government system alone for the negative developments, the public's perception has tended towards this direction. The perception among a significant portion of the society that the new government system had caused the crisis[40] led to a statement of views on the rehabilitation of the system within the ruling wing, and the initiation of efforts to return to the parliamentary system in the opposition wing.

Erdoğan achieved the new government system he dreamed of with the 2017 constitutional amendment, thanks to the support of Devlet Bahçeli, with whom he entered into an alliance.

Some political parties belonging to the opposition (CHP, DEVA Party, Future Party and the Good Party) have initiated efforts on their own government system proposals. Some of these studies were published and shared with the public. On the other hand, the bloc of six political parties (CHP, DP, DEVA Party, Future Party, the Good Party and Felicity Party) which is called the "Six-Party Alliance" started a joint study on the "Strengthened Parliamentary System". This study was completed about a year after its initiation, and was presented to the public.

"The Strengthened Parliamentary System Memorandum of Understanding" presents a text based on the problematic structure and functioning of the current government system on the one hand, and lessons learned from nearly a hundred years of parliamentary system experience on the other. Another feature of the text is that it deals with the government system not as a technical issue, but with the concern of creating a parliamentary system compatible with the requirements of a pluralist and liberal democracy model. Indeed, in the Memorandum of Understanding, it is understood that the Strengthened Parliamentary System is designed such that there are balance and control mechanisms based on the separation of powers, the TGNA is granted increased representation, its law-making and supervisory function are strengthened, the accountability and stability of the executive is ensured, the independence and impartiality of the judiciary is guaranteed – in short, it is designed as a part of a pluralist and liberal political system.

40 See Coşkun/Ete, p. 19.

In this study, which seeks an answer to the question of "what kind of parliamentary system" – just like the Strenthened Parliamentary System Memorandum of Understanding – both the negative consequences of the current government system in practice and the parliamentary system models applied in the past, and lessons learned from them, as well as suggestions for the new parliamentary system, are presented. The proposal for a new parliamentary system is aimed at blunting the negative features of the current political system in Turkey (monoalist, centralist, majoritarian, authoritarian and oppressive) and to dismantle them over time. In this context, the new parliamentary system model was built on principles and values such as the separation of powers, balance and control, power-sharing rather than centralization, democratic legitimacy, liberalism and pluralism.

The proposal for a new parliamentary system is aimed at blunting the negative features of the current political system in Turkey (monoalist, centralist, majoritarian, authoritarian and oppressive) and to dismantle them over time.

In the proposal for the new parliamentary system, recommendations were primarily made to strengthen the TGNA, which had been rendered weak and ineffective against the strong executive envisaged by the 1982 Constitution, in order to ensure that it may properly fulfill its essential functions. In this context, a series of recommendations were made to increase the TGNA's representative power and to repair its damaged prestige, to fulfill its legislative power with participatory and pluralistic methods, and to activate its supervisory function. Also, it was aimed to transform the political system into a pluralistic and liberal character by authorizing the TGNA to elect members to high judicial councils, and to regulatory and supervisory institutions. When we look at the bundle of proposals for the TGNA in general, we observe an effort to make TGNA the main command centre of the political system.

The classical parliamentary system model was taken as a basis for the formation of the executive body. With one difference, the tools of rationalized parliamentarism were proposed in order to eliminate possible bottlenecks that may arise from the functioning of the parliamentary system. In order to prevent government instability, a "constructive vote of no confidence" was envisaged in the overthrow of governments using a vote of no confidence. On the other hand, in order to prevent the concentration of executive power in a single centre, the autonomy of regulatory and supervisory institutions should be constitutionally guaranteed, and also, the sharing of authority between the central and local administrations was proposed.

Finally, a series of reform proposals to strengthen the independence and impartiality of the judiciary, and in particular to eliminate the constitutional and legal gaps that allow the executive to intervene in the judiciary have been outlined.

REFERENCES

Bakır Çağlar, "Türkiye'de 'Anayasa Sorunu'nun Yakın Geçmişi Üzerine Düşünceler", Yeni Türkiye, Issue 30 (November-December 1999).

Bülent Tanör, Osmanlı-Türk Anayasal Gelişmeleri, Revised 3rd Edition, Afa Yayınları, Istanbul, 1996.

Bülent Tanör/Necmi Yüzbaşıoğlu, 1982 Anayasasına Göre Türk Anayasa Hukuku, 14th Edition, Beta Yayıncılık, İstanbul, 2014.

Checks and Balances Network, Presidential System of Government Towards 2021: Legislative and Executive, 21 December 2020, https://www.dengedenetleme.org/dosyalar/file/CHSde-Yasama-ve-Yurutme-Raporu-2021.pdf (Date of Access: 11.10.2022).

Ergun Özbudun, Türkiye'nin Anayasa Krizi, Liberte Yayınları, Ankara, 2009.

Ergun Özbudun, Türk Anayasa Hukuku, Revised 21st Edition, Yetkin Yayınları, Ankara, 2021.

Ergun Özbudun, "Türkiye'nin Parlamenter Sistem Tecrübesi", Türkiye'nin Sistem Arayışı, May 2022.

Fazıl Hüsnü Erdem, "Türkiye'de Anayasa Sorunu ve Anayasal Arayışların Patolojisi Üzerine Genel Bir Değerlendirme", Hukuk Felsefesi ve Sosyolojisi Arkivi, Issue 5, 2002.

Fazıl Hüsnü Erdem, "Türkiye'de Yargının Hukuk Ötesi Sorunları", Dicle Üniversitesi Hukuk Fakültesi Dergisi, Vol 24, No 40, 2019.

Fazıl Hüsnü Erdem, "2017 Anayasa Değişiklikleri ve Cumhurbaşkanlığı Hükümet Sistemi", Türkiye Tipi Cumhurbaşkanlığı Hükümet Sistemi Tartışmaları, Demokrasiyi Güçlendirme Derneği, İstanbul, 2022.

Kemal Gözler, Cumhurbaşkanlığı Hükümet Sisteminin Uygulamadaki Değeri: Bir Buçuk Yıllık Bilanço, 27.12.2019, http://www.anayasa.gen.tr/cbhs-bilanco.htm (Date of Access: 11.10.2022).

Kemal Gözler, Türk Anayasa Hukuku, Ekin Basım Yayım Dağıtım, 4th Edition, Bursa, 2021.

Mehmet Turhan, Hükümet Sistemleri, Gündoğan Yayınları, Ankara, 1993.

Milli Güvenlik Konseyi Genel Sekreterliği [National Security Council General Secretariat], 12 Eylül Öncesi ve Sonrası, Ankara, 1981.

Mustafa Erdoğan, Türkiye'de Hükümet Sistemi ve Siyasi Rejim İçin Yeni Bir Perspektif, Özgürlük Araştırmaları Liberal Perspektif Rapor, Issue 21, June 2021.

Vahap Coşkun/Hatem Ete, Turkey's Search for a System: Social Perceptions and Expectations, Ankara Institute-Cats Network, Ankara, October 2022.

Venice Commission, "Turkey: Opinion on the Amendments to the Constitution", 10-11 March 2017, Opinion No.875/2017, CDL_AD (2017) 005, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e

Yusuf Hakyemez, "Hükümet Sistemi Arayışları ve Yeni Anayasa", Demokratik Anayasa: Görüşler ve Öneriler (Prepared by: Ece Göztepe ve Aykut Çelebi), Metis Yayınları, İstanbul, 2012.

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/

FAZIL HÜSNÜ ERDEM

Fazıl Hüsnü Erdem was born in 1964 in Karakoçan. He graduated from Ankara University Faculty of Law in 1987. In the same year, he started to work as a research assistant at Dicle University. He completed his master's degree at Dicle University (1990) and his doctorate at Istanbul University (1992). He became assistant professor in 1993, associate professor in 1998 and professor in 2004. He is still working as a lecturer at Dicle University, Faculty of Law, Department of Constitutional Law. He has published books and articles on constitutional law, human rights law and political science.

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

TURKEY'S SEARCH FOR A NEW POLITICAL SYSTEM

09

WHAT KIND OF A PARLIAMENTARY SYSTEM?

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.

What Kind of a Parliamentary System by Fazıl Hüsnü Erdem is the ninth report of the 10 academic paper series.