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## **A Brief Overview of the Government System Debates and the Characteristics of the Current Governmental System in Turkey**

Debates about the governmental system in Turkey never have lost popularity during the term of the 1982 Constitution. Particularly in periods of coalition governments, when the constitutional system became dysfunctional due to crisis, views that the parliamentary system must be abandoned and replaced with a presidential or semi-presidential system had been voiced frequently and intensively. The main points highlighted by the proponents of the presidential system were as follows:

Turkey is a rapidly developing and dynamic country. It must overcome a series of chronic social, political and economic problems in order to come to the fore among the countries of the region as well as the countries with similar level of development and to come out of its shell, so to speak. Such a transformation requires a “go-getter” political power capable of implementing decisions rapidly and smoothly. The current parliamentary system with its instable and cumbrous structure cannot meet the “effective government” needs of Turkey. Hence, adoption of the presidential system of the United States or the semi-presidential system of France is a must for Turkey to be able to seize the existing opportunities and to earn the deserved position in the race of civilizations.

On the other hand, politicians and academic who argue that the presidential or the semi-presidential system is to produce more harm than benefit state that the presidential system might turn into an authoritarian regime and that the semi-presidential system might give way to tensions and conflicts between the legislative and executive bodies – in the case that the president and the parliament are of different world views. In this parallel, the opponents stress that the current parliamentary system must be preserved with a range of revisions that will improve the functionality.

The debate about the presidential system in the context of the abovementioned views were initiated by Turgut Özal. Occasionally highlighting the search for a new governmental system during his term as the prime minister (1983-1989), Özal made a critical statement in his presidency in 1992 in the journal "Opinion - Görüş" issued by the Turkish Industrialists' and Businessmen's Association (TUSIAD). Stressing that coalition governments fail to make a leap forward, Özal pointed out that Turkey needed to make a breakthrough to become one of the largest 10-15 economies of the world and that this required the introduction of the presidential system.<sup>1</sup> The debates about the governmental system were also kept on by Süleyman Demirel, who assumed the presidency in 1993 after the decease of Özal. For instance, in his opening address in the 21st Government 2nd Legislative Year of the Turkish Grand National Assembly (TGNA), Demirel referred to the popular election of the president with a run-off election among other proposals to overcome the "political deadlock" in Turkey.<sup>2</sup> The debates about the governmental system were kept on the agenda (continuously but at some interval and certain doses) by the Justice and Development Party (AKP) that assumed the power after the 2002 elections and the leader cadres of the AKP opened to discussion the presidential system proposal.

While Turkey was going through such developments, the term of the 10th President Ahmet Necdet Sezer in the office ended on May 16, 2007 and Turkey found itself engulfed within a presidency crisis. As per the decision of the Constitutional Court—that sets the quorum for presidential elections at 367, the two-thirds majority of the TGNA—which is called the "367 rule" by the public, the AKP majority could not elect the new president. In reaction to this, the TGNA called for early elections on the one hand and introduced an amendment to the constitution stipulating that the president shall be elected by the people on the other. The mentioned amendment was accepted with 68.95% yes votes against 31.05% no votes in the referendum on October 21, 2007 participated by the 68.95% of registered voters. Consequently, with this constitutional amendment, Turkey accepted one of the most fundamental elements of the presidential system, that is, the popularly elected president.

At this point, it is critical to stress that the 2007 constitutional amendment adopted as a result of the abovementioned process is not an output or outcome of the governmental system debates carried out so far in Turkey. In other words, it is not possible to claim that the arguments for the presidential system that has emerged in 1980s and grown since then were taken into consideration in the mentioned process of constitutional amendment. The amendment did not introduce a US-type presidential system or a French-type semi-presidential system as highlighted by the proponents but incorporated the

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<sup>1</sup> Opinion, Issue. 5, September-October 1992 pp. 12-24.

<sup>2</sup> TGNA Bulletin, I. 70, October 1999 pp. 5-9.

element of a popularly elected president into the parliamentary system stipulated in the original version of the 1982 Constitution. Therefore, this amendment was the reflection of political reactions and strategies and an attitude reading "If we cannot solve this at the Parliament, we solve it with the ballot box" rather than of a thoroughly assessed and analyzed governmental system design. Problems that can be caused by the preference for such partial constitutional amendment about the governmental systems over an all-out governmental system design will be more visible when the issue is evaluated in the context of constitutional engineering.

### **The Governmental System Turkey Adopted with the Constitutional Amendment of 2007**

Before discussing the problems that the governmental system entered into effect following constitutional amendment adopted after the 2007 referendum might cause, it is needed to provide general information about governmental systems and locate the one in Turkey in a frame within the current governmental system models across the world.

Governmental systems, that is, the web of relations between the legislative and executive are traditionally examined in two broad headings: "parliamentary system" and "presidential system". In order to define and compare the two systems, it will be wise to review the structure and constitutional powers of the executive as well as its relations with the legislative:

- i. **In a parliamentary system**, the executive body is dual or double-headed: on the one hand is the "head of state" and on the other hand is the "government", that is, "prime minister" and the "ministers". The "head of state" can be the "monarch" (that is, "king" or "queen") assuming the throne on the basis of the rules of "inheritance" and "dynasty" in monarchies as in the United Kingdom, or the "president of republic" elected by the parliament in republics as in Germany. **In a presidential system**, the executive is mainly a single-person entity being the "president". Although the president is accompanied by a cabinet of "secretaries of state" these are completely subordinated to the president and are devised to assist the president.
- ii. **In a parliamentary system**, the powers of the head of state, king, queen or president, are symbolic. The main executive functions are fulfilled by the government, that is, the prime minister and the ministers. **In a presidential system**, the key executive powers are employed by the president.
- iii. **In a parliamentary system**, the prime minister and ministers emerge directly from the legislative body. **In a presidential system**, the president is popularly elected; thus the parliament has no role in the president's coming to power.

- iv. **In a parliamentary system** “legitimacy of the ballot box” is held only by the parliament. In other words, in parliamentary systems, it is solely the parliament that assumes the office via elections. **In a presidential system**, both the parliament and the president enjoy the “legitimacy of the ballot box”.
- v. **In a parliamentary system**, the government which performs the fundamental executive authorities remains in the office as long as it preserves the confidence of the majority within the legislative body. In other words, the government is politically responsible in front of the parliamentary majority. The parliamentary majority which assigns the administrative competence to the government to realize its political program has the right to call the government to account in case the related program is executed unsatisfactorily or is not executed fully. **In a presidential system**, although there exist certain checks and balances established between the legislative and the executive; it is not possible for the parliamentary majority to call the president to political account or dismiss the president through a “vote of no confidence” as in the case with the parliamentary system.

In the context of governmental systems, “semi-presidential” system must also be discussed. As in France, a typical example of the semi-presidential system, the executive has a dual structure: a popularly elected president with “considerable powers” and with no political responsibility in front of the parliament, and a government formed within the parliament and has political responsibility against it. This system is similar to the presidential system with the popularly elected president; however, the president in the semi-presidential system is not the one and only competent body that decides the assignment and dismissal of the cabinet members as it is the case with the presidential system. Semi-presidential system is alike the parliamentary system in the sense that there exists a government formed within and politically responsible to the parliament, whereas it is different than the parliamentary system since the president is popularly elected.

Originally the governmental system of the 1982 Constitution is the “parliamentary system”. That is, the executive body in Turkey stipulated by the 1982 Constitution has a dual structure with a government formed within and accountable to the TGNA and a president elected by the TGNA. However, the original version of the 1982 Constitution, different from the classical parliamentary system, envisaged a stronger executive – a stronger president in particular.<sup>3</sup> Therefore, given that the authorities of the president defined in the 1982 Constitution was wider in scope compared to that in the classical parliamentary system, one can claim that with the amendment in 2007 that foresaw the direct election of the president has already transformed the governmental system in Turkey into the semi-

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<sup>3</sup> For further reading please see Levent Gönenç, “Presidential Elements in Government-Turkey”, *European Constitutional Law Review*, Vol. 4, No. 3, pp. 488-523, 2008.

presidential system. Though this assessment seems to be reasonable at first glance, it will be harder to stick to this after scrutinizing the characteristics of the semi-presidential system, and particularly the constitutional and political position of the directly elected president in the French case. Even though the powers of the president are stronger than those of a president in a classical parliamentary system, it is weaker than those of a president in a classical semi-presidential system. For instance, the authority of the President of the Republic of France to submit any government bill to a referendum (article 11), to dissolve the parliament in his/her own discretion (article 12), to exercise emergency powers (article 16) are wider in scope both in paper and in practice compared to the authorities defined within the constitutional structure of the Republic of Turkey.

As a result, the system established after the constitutional amendment in 2007 is neither a parliamentary system since the president is directly elected nor a semi-presidential system since the current powers of the president are weaker than those of a president in a classical semi-presidential system. The current system must therefore be handled and defined differently. This system, with reference to the literature in this discipline, can be called a "parliamentary with 'president' system".<sup>4</sup>

In a parliamentary with 'president' system, directly elected president is deprived of the powers regarding the composition of the cabinet, the dismissal of the parliament or the executive processes in his/her own discretion. In fact, as a number of authors in the discipline stress, in the current formation, the system can function as parliamentary although the president is directly elected by the people. On the other hand, direct popular election of the president contradicts with the nature of the parliamentary system in which the president is elected by the parliament and is entitled to symbolic authorities. A presidency that directly enjoys the electorate's legitimacy but has symbolic powers is not only irrational but also prone to crises. In short, it is quite unlikely that a president who won more than 50% of the votes and a prime minister who won 35-40% of the votes can coexist without causing crisis unless they hold the same world view. Now let us develop these points on a concrete framework.

### **Disadvantages of the Parliamentary with 'President' System**

Assessing the problems the parliamentary with president system might cause, we would like to refer to two important points: debates about impartiality and legitimacy crisis.

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4 Matthew Soberg Shugart, "Of Presidents and Parliaments," *East European Constitutional Review*, Vol. 2, No. 1, 1993, pp. 30-32. For further reading, see Levent Gönenç, *Prospects for Constitutionalism in Post-Communist Countries*, Kluwer Law International, The Hague, London, New York, 2002, pp. 327-329; Levent Gönenç, "Hükümet Sistemi Tartışmalarında 'Başkanlı Parlamenter Sistem' Seçeneği", *Güncel Hukuk*, 2007, Issue: 44, pp. 39-43; Şule Özsoy, *Başkanlı Parlamenter Sistem*, XII Levha Yayıncılık, İstanbul, 2009.

One distinguishing feature of the parliamentary system in the above formation is the unity of the political program to be implemented. In other words, it is the one and same program that makes the voters elect a certain political party, defines the fundamental objectives of the government the relevant political party formed and that will be implemented throughout the mentioned party's term in the government. Given the functioning of the parliamentary system, one can maintain that the executive authority is principally hold by the government which employs those to realize the political program that remains sustainable from the elections throughout the term in government. Within this framework, the president is a nonpartisan and impartial entity who is not and should not be involved in any political program.<sup>5</sup>

In a parliamentary with 'president' system, if the popularly elected president and the parliamentary majority (and thus the government formed within) have the same world views, the mentioned three actors will most likely not act against one another but cooperate to realize a single political program. In that case, "the unity of the political program", a principle applicable for the parliamentary systems, will not be violated. Nevertheless, the impartiality of the president will not hold and the president will stand aside the government. More importantly, the system will accumulate power in favor of a certain world view. Evidently, this might apply also for the case of the parliamentary election of the president; however, one can presuppose that a president backed directly by a wide voter base will become a much stronger symbol of power.

In the opposite case, that is, if the president and the parliamentary majority (and therefore the government formed within) have different world views, grounds for polarization the ultimate outcome of which is legitimacy crisis will emerge. Following the above analysis, the unity of the political program", one of the main principles applicable for the parliamentary systems, will become dysfunctional.

The president and the majority party will come up with different programs and reflect different world views in the programs they promised to follow when they assume the power. In other words, in this system the president as well as the political parties that compete to make it to the parliament and in the end control the parliamentary majority and the government will appear before the voters. In order to be preferred by the public and to ask for their votes, the president will appear on the streets and carry out election campaigns, give promises to voters and even make ideological references just as political parties do. When the political parties competing in elections eventually assume the power, they can employ the parliamentary majority and the governmental powers to realize their political programs. But how will the president fulfill the promises made during the election campaigns? As highlighted above, in a

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<sup>5</sup> The sub-title of the relevant article of the 1982 Constitution is the "Qualifications and Impartiality" [of the President] (Article 101).

parliamentary with 'president' system, the president directly elected by the people will be to a high extent incompetent. More precisely, the powers of the president holds are inconvenient for realizing a certain political program. In this sense, how can an incompetent president perform? Unfortunately, the answer to this question in a parliamentary with 'president' system cannot be found in the constitution. We believe that in a system where the president is directly elected, it will be wise to entitle the president to powers to allow him/her to be involved in the executive processes for instance, to entitle the president to propose a law, without prejudice to the separation of powers. It is still the parliament which will negotiate such proposal and decide whether or not to enact it; however, such authority will at least furnish the president with a legitimate constitutional tool for meeting the promises made to the voters. Otherwise, it is inevitable that the president will push his/her constitutional powers to be able to meet the promises. What is more important, in an effort to meet those promises, the president might completely ignore impartiality requirements. The worst case scenarios in this respect are that the president searches for proponents in the parliament; tends to form explicit/implicit alliances with political parties; and cooperates with the opposition to overthrow a government that contradicts with his/her world view. It is not hard to assess how harmful such attempts will be to the impartiality of the president. More importantly, the mentioned "rival political programs scenario" might even pave the way for a legitimacy crisis. In other words, the mentioned polarization which emerges in a milieu in which the president and the parliamentary majority (and therefore the government formed within) have different world views will most likely lock at the following question: "Who is the true representative of the people: the president or the parliament?" There is no doubt that each actor, as elected by the people, will think it has the right to legitimacy which will bring the system into a deadlock. This, say the least of it, is a crisis.

Consequently, it is apparent that the parliamentary with 'president' system not only will fail to resolve the governmental system debates in Turkey but also evoke new debates in the future (particularly if the president and the parliamentary majority and thus the government have different world views). This analysis reveals that the constitution making process must involve a comprehensive assessment and an all-out design for the governmental system. Partial amendments about the governmental system that are not discussed with reference to the predictable outcomes do not solve but generate crises. However, the constitution has to be the guarantee of the political system.