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THE PRESIDENTIAL SYSTEM IN TURKEY

Opportunities and
Obstacles

Battal Yilmaz



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CONTENTS

1	Introduction	1
2	Government Systems and Turkey	13
3	Historical Background of the Presidential System in Turkey and a General Assessment of the Proposed Justice and Development Party's Presidential System	31
4	Presidential Government System in Turkey	43
5	Conclusion	75
	References	91
	Index	101

Introduction

Abstract The first section of the present study addresses the general literature on the presidential system. At present, it is possible to identify three significant systems of government: the presidential system, the semi-presidential system and the parliamentary system.

Keywords Parliamentary system • Semi-presidential system • Presidential system • Justice and Development Party • Nationalist Movement Party

The government system is determined by the operation of the legislative, executive and judicial powers, which are the means of exercising sovereignty in the framework of the presence of the state apparatus. From the emergence of the state until the present day, it is possible to talk about the existence of government systems, regardless of how much democracy the state entails.

However, at present, it is possible to mention three significant systems of government. The three systems are the presidential system, the semi-presidential system and the parliamentary system. Rationalized parliamentarism can also be added to these systems.

In the first section of the present study, the general literature on the presidential system is addressed. The presidential system historically emerged in the United States as a reaction to the Westminster system. The presidential system is based on the strict separation of powers between the legislature and the judiciary and the single individual executive selected for

a fixed term. In the United States, legislative power cannot dismiss the president. However, the president does not have the authority to present a draft of law. It could be argued that the US judiciary, which operates based on the Anglo-Saxon judicial system, has the authority to act independently from the Senate and House of Representatives majority. In the presidential system, if the political tendencies in the legislature and the executive are contradictory, it is likely that there will be a gridlock. However, it could also be argued that the stability of the government is prioritized in the presidential system based on the fact that the president is elected for a fixed term and cannot be dismissed without impeachment. At the same time, it is a zero-sum game. Due to this feature, the system is predictable. The electorate is aware of the fact that the winner will occupy the executive branch. However, several infrastructural elements are required for the system to prevail. It is possible to mention the facilitating factors for the system, such as the democratic culture, electoral system, political party system, independent jurisdiction and operations, supervision of the executive by the public and secondary legal regulations.

In terms of national practices, the presidential system is widely implemented in the United States as well as in Latin America (Venezuela, Chile, Peru, Mexico, Colombia, Argentina, Brazil, etc.). The democratic ranking of the latter countries do not seem to be high. Thus, based on the tendency toward authoritarianism in the Latin American experience, there are several critics of the system. In the first section of the study, discussions on the presidential system are addressed.

The semi-presidential system, which is the second governmental system, is a hybrid between the presidential and the parliamentary systems. Thus it could be argued that the semi-presidential system was constructed to remove the inadequacies of the presidential and the parliamentary systems. The system consists of a duality between the president, selected by the people for a fixed term, and the prime minister, who works under the confidence of the legislative branch. Thus if the president and the prime minister belong to separate political tendencies, co-habitation (co-administration) and search for political compromise are inevitable. The system, adopted in France with the Fifth Republic, is practiced in especially central and eastern European countries and Sub-Saharan Africa. In this context, with the amendment to the Turkish constitution enacted in 2007, a transformation to the semi-presidential system is under debate due to the presence of a president who is elected by the people for a fixed term and a prime minister who is mandated by a vote of confidence at the

legislative. On the other hand, the nature of the semi-presidential system results in certain kinds of crises. In the first section of the study, the main parameters of the semi-presidential system, national practices and possible disadvantages of the system are discussed.

The parliamentary system, which is the third governmental system, is based on a legislative branch directly elected by the people and an executive branch composed of legislative branch members who govern under the mandate of legislative confidence. It is, therefore, a system based on the soft separation of powers. This system was first introduced in the UK and has been implemented in several European Union countries ever since. The assumptions that the parliamentary system could lead to governmental and thus political instability and general criticisms about this system are discussed in the first section of the present study.

Presidential, semi-presidential and parliamentary systems have been introduced. The third parliamentary system examined represents a tradition of about 150 years in Turkey. During this period, the parliamentary system has been interrupted by periods of military coups. In fact, constitutions designed by military junta regimes have changed the form and content of the parliamentary system.

The current 1982 constitution emerges as a structure that prioritizes a strong executive; the legislative and executive intermingle and the executive even controls the legislative. Debates on the intervention of the executive in the judiciary system and on an independent judiciary abound as a result of the soft separation of powers due to the nature of the system. In this framework, the first section focuses on a discussion on the Turkish parliamentary systems and on “rationalized parliamentarism,” which aims to reform the existing system as an alternative model. The propositions of rationalized parliamentarism, along with its theoretical framework, to render the Turkish parliamentary system functional are addressed based on the experiences of various countries.

In this context, rationalized parliamentarism is a system that establishes legal instruments to overcome the possible government crises that could arise in the parliamentary system and aims to provide government stability, leading to political stability. The tools of the rationalized parliamentarism are limitations on the motion of censure, the implementation of cooling-off periods, a requirement of an absolute majority vote for censure motions while in motions of confidence, the stipulation that only nay votes are counted and a consideration of the vote of confidence under the threat of dissolution as a constituent vote of censure. Rationalized parliamentarism,

with these instruments, was proposed by the main opposition party in Turkey (Republican People's Party) to resolve the existing problems of the parliamentary system in their election bulletin for the June 7 and November 1, 2015, general elections. However, whether the efforts to limit political power with legal instruments in the parliament via rationalized parliamentarism would serve the political stability is contentious. Finally, the first section of the present study also addresses rationalized parliamentarism.

Because the main topic of the study is the presidential system, the second section begins with a discussion of the historical development of the presidential system in Turkey. Thus the development of the post-1980 presidential system will be scrutinized. This date was selected as the baseline because Turgut Özal was the first to raise the issue of changing to the presidential system, which occurred within the framework of the search for an alternative to the parliamentary system structured by the 1982 constitution. At the beginning of this political journey, the Motherland Party (MP) and its chair, Özal, won elections, becoming the ruling party in 1983 in the first general election after the interim regime in the post-coup period. Özal, Motherland Party chairman and prime minister, won the 1987 elections as well and aimed to replace President Kenan Evren, whose term would end in 1989; at the time, Özal and the MP controlled the majority and had the required number of votes for election. However, what Özal did not desire was to lose control over his party after being elected president. In this context, he introduced the presidential system debate. Following Özal's death, Süleyman Demirel, the chair of the True Path Party, was elected president in 1993. Demirel continued the presidential system debate on the same grounds as Özal. These initiatives remained as short-lived rhetoric during the time due to the dominance of the military in politics. However, the rule of the Justice and Development Party (JDP) after the 2002 elections once again introduced the debate on the presidential system in Turkey. The presidential system, which remained an issue during the first years of the JDP government and was discussed by a number of powerful leaders, became tangible after the "Executive Proposals" were presented to the Reconciliation Commission, established after the 2011 general elections. The proposal, however, did not become a motion in the Turkish Grand National Assembly because the consensus of all four political parties (JDP, Republican People's Party, Nationalist Movement Party and Peace and Democracy Party) was required.

On the other hand, the Executive Proposals were widely discussed by the public, especially the provision of the “power of mutual dissolution,” which would allow the Grand National Assembly and the president to dismiss each other. This idea was considered to prevent political instability when the president and the parliament have different political views, although the provision could also produce political crises when used inadequately or with ulterior motives. Other topics of debate included the appointment of judges to the judicial organs by the president (half of the members of the High Council of Judges and Public Prosecutors (HSYK) and the Constitutional Court), the obligation to pass a motion previously vetoed by the president with a three-fifths majority, the ability of the president to enact bylaws and the future of the separation of powers. Thus the second section of the present study assesses the “Executive Proposals.”

The third section addresses the presidential government system that was introduced as a result of the consensus between the JDP and the Nationalist Movement Party in 2016 and discussed by the Parliamentary Constitutional Commission and the General Assembly. The presidential government system was first mentioned by National Movement Party Chairman Devlet Bahçeli at the Parliament Group Meeting on October 11, 2016. As a result of the negotiations between the JDP and the Nationalist Movement Party, the motion was sent to the Constitutional Commission of the Turkish Grand National Assembly (TGNA) on December 12, 2016; the commission started negotiations of the proposal on December 20, 2016. The bill, which was presented as 21 items during the nine-day commission negotiations, was reduced to 18 items and was approved by the commission on December 30, 2016. Negotiations in the General Assembly began on January 9, 2017. The second round of negotiations was completed on January 21, 2017. Following the publication of the amendments in the *Official Gazette* on February 11, 2017, the Supreme Board of Elections set April 16, 2017, as the referendum date. The presidential government system motion passed the referendum and was enacted.

The power of mutual dissolution—that is, the power of the Grand National Assembly and the president to dismiss each other—was included in the proposed presidential government system with the same test as developed in 2011 under the “Executive Proposals” in the Reconciliation Commission discussions. Simultaneous dissolution is possible with a three-fifths majority vote in the legislative branch—that is, 360 yay votes—and elections are held as a result. Thus, although the president is limited to a

maximum of two terms in the office, the potential of the legislature to use this power could create interesting results. Also, the discussion on whether the power of mutual dismissal would lead to political stability or instability when the president and parliament have different political views are also addressed in the present study.

The power to issue presidential decrees was also included in the “Executive Proposals” in 2011. In the said motion, it was stipulated that the president could issue a “presidential decree” in matters that he or she deems appropriate in the executive arena related to general politics. To issue a presidential decree on a topic, lack of applicable and clear provisions in law on that issue is a prerequisite. It was foreseen to cover issues related to executive powers in principle. However, it would not possible to use this power to regulate fundamental rights: rights and freedoms mentioned in the first and second sections of the second part of the constitution and political rights and assignments mentioned in the fourth part by presidential bylaws. However, there is no stipulation preventing the regulation of economic and social rights by a decree. Also, it is thought that the provisions of the law would apply when there are contradictions between the regulations stipulated by law and by decrees. Thus the Constitutional Court is authorized to supervise the formal and fundamental aspects of presidential decrees. This section of the study discusses such issues such as whether the power of the presidential decree (*decretum*) would be exclusive to the presidential government system or would be a general practice; the question of when presidential decrees contradict the law, which authority rules on incapacity and priority in execution; and whether the legislative branch would be rendered dysfunctional as a result of the powers endowed to the president because the primary duty of the assembly is to enact laws.

In the analysis of the presidential government system, the topics that were not included in the 2011 “Executive Proposals” will also be evaluated. One of these topics is the amendment that would lead to a “party member president.” With this amendment, the last paragraph of Article 101 in the 1982 Constitution, which states, “the President elect will be discharged from the party and the Grand National Assembly of Turkey,” is repealed. Thus there is no legal obstacle to prevent the participation of the president in the decision-making mechanisms, including to chair the party officially. This study examines the difficulties that could be encountered and the potential political crises that could be experienced in the

implementation of the party member president because the constitution stipulates that the president should be impartial as the coordinator among the legislative, executive and judicial powers.

Another topic that was not included in the text of the 2001 “Executive Proposals” but was included in the presidential government system motion in 2011 was the issue of the vice presidents, who are not elected but appointed without a limitation on the number. If the president of the republic is sick or temporarily unavailable for any reason or the president is dismissed for any reason, the vice president would act as a deputy with full official powers until elections are held within 45 days; however, the fact that the vice president would not be elected but appointed by the president in the Turkish system, contrary to the general practices world-wide, caused serious debates. The present study discusses the relations between the appointed and the elected officials and the possible impacts of the use of the presidential powers by an appointed vice president who does not have the legitimacy of the election.

Also not included in the 2011 “Executive Proposals” but mentioned in the presidential government system motion was the checks on the executive by the legislative branch. In this context, the 1982 constitution included checks, such as parliamentary questions, general discussion, censure, parliamentary investigation and parliamentary inquiry as supervisory instruments consistent with the parliamentary system. In the presidential system, only written questions, general meetings and parliamentary inquiries were included. In other words, there is no mention of censure, which is found in the core of the parliamentary system but is also found in certain presidential system practices. In particular, especially in the parliamentary system, it is possible to send the executive branch member ministers to the Supreme Court after initiating a parliamentary inquiry with the signatures of one-tenth of the members of parliament (55 representatives) and with the absolute majority vote in the assembly; in the presidential system, an absolute majority is needed (301) for the motion against a minister, and three-fifths of the General Assembly (360 members of the parliament) are needed for a commission inquiry and two-thirds of the vote (400) are required to send the minister to the Supreme Court. On the other hand, it was stated that it became easier numerically to initiate a parliamentary inquiry against the president and to bring the president into the Supreme Court. In addition, because 12 of the 15 members of the Constitutional Court would be appointed by the president directly or indirectly, it was

debated whether the Supreme Court would be dysfunctional under the circumstances. All these discussions on checks and balances and the separation of powers are included in the study.

It was thought that the presidential system, due to the centralized nature of the executive and the presence of a single administration for the tasks that normally require the collaboration of the executive and the legislative, would allow rapid and active solutions for complex official operations in a modern state. In this context, the president of the Republic of Turkey would be able to form a public legal entity, issue resolutions that could reorganize the administration and have the authority to appoint senior public officials (governors, ambassadors). However, it was claimed that the abovementioned powers would result in accidental consequences. These discussions are included in the study as well.

Another debate is on the relationship between government systems and economic development. As a matter of fact, it was claimed that the economic growth trend in Turkey would increase with the presidential system. To evaluate the presidential, semi-presidential and parliamentary systems based on economic performance, research was conducted on 119 countries, examining 65 years of data between 1950 and 2015. It was claimed that the parliamentary system was more successful than the presidential system. Thus the relationship between the presidential government system and economic development is addressed in the present study.

The presidential system is a zero-sum game in which the winner of the election—the one-man executive (vice presidents and ministers are appointed by the president)—takes all. There is a strong party tradition in Turkey, and as a result of the pluralist democracy there are several parties in the parliamentary system. In this framework, it is possible to observe single-party governments or coalition governments in the executive branch, representing their social bases. However, in the presidential system of government there is a possibility of being out of system of the parties and their social bases, but ruling party. On the other hand, the political polarization between the social bases is the highest within the framework of political parties and disciplinary party in Turkey. Hence the present study includes discussions on whether the presidential system, party platforms, political polarization and resulting fractures and conflicts among party bases would present a danger against the sustainability of the system.

Holding legislative and executive elections every five years with the presidential system is questioned in terms of the legitimacy of representation.

When the power of mutual dissolution; concurrent legislative and executive elections; organic relationships among the party, the president and other candidates; and the possibility of elected officials also acting as party chairs are considered, it could be argued that election campaigns would be led by the presidential candidates. In other words, the possibility of a legislative branch under the full control of the executive cannot be ruled out, although it is also possible that the system would be stable due to the potential of parallel developments in the composition of the executive and the legislative branches. However, it is possible to observe the opposite practices in global political systems. Thus the present study discusses the legislative and executive terms and scenarios that could occur with consecutive elections.

In the presidential system, the power to propose a bill on budget appropriations would belong to the president along with the executive powers. Yet the same power belongs to the cabinet of ministers because the executive powers belong to the cabinet of ministers in the parliamentary system. Thus it could be considered natural for the executive branch to draft the budget act. However, it should be noted that according to regulations if the budget act cannot be enacted within the allocated time by the legislative branch, a provisional budget will be prepared; if that budget cannot be enacted in time, then the budget of the previous year will be increased based on the revaluation rate and enacted. Thus the question of whether presidential authority would keep the legislative branch in ignorance of the budget assessments and implementation is included in the present study. Also, in this context, the study examines the steps that should be taken before adapting the provisional budget and revaluation, which were considered methods for overcoming budgetary conflicts and gridlock between the legislative and the executive in the United States, the model country for the presidential system.

The presidential government system naturally restructures the relations among the legislative, executive and judiciary branches. In fact, the first emphasis on separation of powers began with Aristotle; Locke and Montesquieu contributed to the development of the concept. In Turkey, the almost 150-year-long parliamentary system was based on the soft separation of powers. However, in the presidential government system, the president would have legislative powers via presidential decrees and executive powers in addition to appointing judges to judiciary organs. In fact, it was stipulated that 12 out of 15 members of the Constitutional Court will be directly or indirectly appointed by the president, 6 out of 13 members

of the Council of Judges and Prosecutors (HSK), which conducts the appointments, disciplinary actions and personal records in ordinary and administrative judiciary, will also be directly appointed by the president: the justice minister and Ministry of Justice permanent secretary, who presides when the justice minister is absent, are obvious members; 3 of the remaining 4 members appointed by the president will be selected from among the ordinary justice judges and prosecutors, and the remaining member will be selected from among the administrative justice judges and prosecutors. Of the 7 members not appointed by the president, the General Assembly will select 3 from the members of the Supreme Court of Appeals, 1 from the Council of State and 3 from the faculty of university departments of law and attorneys-at-law. It was stipulated that three candidates should be determined by the Joint Commission established by the members of the TGNA's Constitution Commission and Justice Commission. The three candidates for each member position will be determined by a two-thirds majority; if that fails, the member will be determined by a three-fifths majority. If that also fails, the member will be determined by lot among the two candidates who received the most votes. The same procedure will be subsequently applied in the General Assembly of the TGNA, and if the two-thirds (400) and subsequent three-fifths (360) majority fail, the member will be selected by lot among the two candidates who received the most votes in the previous round.

In particular, in cases when the executive and legislative branches are dominated by the same political tendency, it is technically feasible for the president (member of a party and possibly the chair of that party) to determine all members of the HSK who recently lost the adjective *supreme* from their titles. Even if this scenario does not occur—that is, if the members of the HSK elected by the legislative branch do not share the political beliefs of the president—the direct election of 6 out of 13 members by the president and the election or support of only 1 member by the TGNA means the control of the council would fall into the hands of the president, and the president would have the advantage in the Council of State and Court of Appeals and even in the Constitutional Court. Because one-quarter of the members of the Council of State are directly elected by the president and the remaining members are elected by the HSK, all members of the Council of State would, in effect, be determined by the president. The situation in the Court of Appeals is not different. All members of the Supreme Court of Appeals will be elected by the HSK by absolute majority. In turn, the

majority of the HSK were selected by the president; thus the members of the Supreme Court of Appeals are, in effect, determined by the president. One-third, or 5 members, of the Constitutional Court are appointed by the Council of State and the Supreme Court of Appeals, which means these members are ultimately appointed by the president as well (3 members will be appointed by the Supreme Court of Appeals and 2 members will be appointed by the State Council among three candidates nominated for each vacancy). Consequently, the HSK would enable control over ordinary, administrative and constitutional jurisdictions in addition to conducting all appointments, disciplinary actions and personal record processes for ordinary and administrative arenas. These facts raise the debate on the preservation of the separation of powers. However, government circles claim that the presidential system of government would introduce more healthy checks and balances. In the present study, the exercise of the separation of powers principle based on the presidential system is discussed within the framework of these debates.

One viewpoint notes that the presidential government system introduces a central administration that is consistent with the Turkish state tradition and that this framework is suitable for Turkey's social structure. Thus implementation of a new system should be considered an opportunity instead of something to fear. Another argument says that Turkey's political parties and electoral law should be amended instead of changing the entire government system. Furthermore, others search for the recipe for a more democratic and functional system that would solve the problems of the current and longstanding parliamentary system by implementing rationalized parliamentarism. In this framework, the study examines the necessity of a changing the country's the government system.

In this context, the study compares the Turkish parliamentary system and the presidential government system. Finally, the advantages and disadvantages of the presidential government system in Turkey are discussed.

The study examines three topics that were included in the provisional articles after the referendum of April 16, 2017, and that will immediately be enacted. First, the membership and chair of Recep Tayyip Erdoğan in the JDP after the enforcement of the party member president clause and the reaction of the opposition to this development is discussed. The second topic concerns the selection of HSK members. The attitudes of the government and the opposition during the member selection by the Constitutional Commission, the TGNA and the president are looked at in terms of separation of power. The third topic is the abolition of the

Military Court of Appeals and the Supreme Military Administrative Court as well as reactions of the government and the opposition on the elimination of the selection of Constitutional Court members using the Military Court quota.

In the concluding section, the feasibility of the presidential government system motioned by the consensus of the JDP and the Nationalist Movement Party in Turkey is discussed and recommendations on the issue are presented.

Government Systems and Turkey

Abstract As a theoretical framework, this chapter scrutinizes the parliamentary, semi-presidential and presidential systems. It engages with critics to the parliamentary system and illustrates alternative models for Turkey.

Keywords Parliamentary system • Semi-presidential system • Presidential system • Dual executive branch • Rationalized parliamentarism

The collection of the legislative, executive and judicial powers that constitute the state in one branch or its distribution among different branches determines the governmental system in that state. In short, the concept of the government system is defined as “the collection of the system of rules and institutions implemented in constitutional democracies or non-democratic regimes based on the distribution and regulation of powers within the state” (Parsak 2012: 1; Hekimoğlu 2009: 5).

In this context, a change in government system would not affect only the mandate of the executive branch. Relations between the state and society, the state and the individual and finally the organs of the state are coded based on the nature of the government system. It is therefore necessary to recognize that a possible government change would be a radical move. It would be misleading to evaluate the proposals of a system change from only the perspective of a pure legal engineering. To analyze the comparative political literature, it is necessary to investigate and analyze

the systems along with the political, social, cultural and historical characteristics of the countries that operate under those systems (Efe and Kotan 2015: 67).

On the other hand, it is necessary to mention that it is very difficult to change government systems in countries with an established democratic system. The practical applicability of the government system depends on the nature of the constitution and the rapport of the government system (Ganghof 2015: 827). In this context, discussions on government systems (semi-presidential, presidential, parliamentary systems) are quite current in Turkey.

2.1 SEMI-PRESIDENTIAL SYSTEM

As a concept, the semi-presidential system emerged to overcome the inadequacies and faults in the two classical systems—namely, the presidential and the parliamentary systems (Canas 2004: 96). It could be argued that the general consensus in the semi-presidential system is based on two political figures: the president elected by the people for a fixed term as a significant constitutional authority and the prime minister who has the vote of confidence of the parliamentary majority (Chang 2015: 4; Elgie and McMenamin 2011: 618). Thus the executive cabinet, which includes the president, the prime minister and ministers, reports to the legislative branch (Duverger 1980: 165).

The semi-presidential system was implemented in France in 1958 with the constitution of the Fifth Republic (Özbudun 2005: 106) and adopted in Portugal with their 1976 constitution (Canas 2004: 97). Subsequently, along with the fourth wave of democratization in the 1990s, several central and eastern European countries and former Soviet Union nations as well as Sub-Saharan African countries adopted the semi-presidential system (Elgie and McMenamin 2011: 616). In this context, Maurice Duverger (1992: 901) considers the semi-presidential system to be ideal for countries in transition from totalitarian and authoritarian regimes to democracy.

Another feature that is commonly observed in the semi-presidential system is that it allows for the share of power and co-habitation when the government that emerged as the result of the presidential and legislative elections include different parties (Elgie and McMenamin 2011: 618). This fact offers the possibility of avoiding political crises through sharing

power, where the dual leadership allows different levels of power for both the president and the prime minister elected from rival parties, instead of the scenario where the winner takes all (Elgie 2011: 15).

The same situation that enforces a consensus carries the risk of a political crisis. In fact, Sartori (1997: 125) described the most problematic area in the semi-presidential system as the risk of co-habitation and dual leadership leading to political gridlock (Elgie 2007: 57; Fernandes and Magalhaes 2016: 63). It is accepted that instability increases during co-habitation periods, when the president's party is not represented in the cabinet (Fernandes and Magalhaes 2016: 68). It is possible to overcome such risks during these times—for example, in France, there is a tendency for the president to remain passive and the electorate to vote for agreeable candidates.

In the semi-presidential system, the balance of authority and responsibility between the president and the legislative body is very important. In France, the model semi-presidential system, after constitutional amendments broadened the powers of the president, presidential elections started to become more important than parliamentary elections (Hewlett 2012: 410).

Elgie (2011:1), a leading authority of the semi-presidential system, considered that as a result of the 2007 constitutional amendment, Turkey became a semi-presidential system, with the president elected directly by the people. Kahraman (2012a: 452), who stated his reservations on the practice of the semi-presidential system in Turkey, argued that it would not be easy to overcome the crises that would arise in case of a conflict between the president and the government in Turkey, where, contrary to France, there is no culture of consensus in the society.

A general look at countries with the semi-presidential system demonstrates there are serious differences between the election systems, party systems, socioeconomic status, political heritage, constitutional framework, dominant political culture and so on, and these differences shape the political practices in those countries. Constitutional powers controlled by significant political actors, the prevailing cycle in the country when a new regime or system is proposed, the quality of the majority in parliament and the relationship between the president and the house majority result in quite different semi-presidential system practices. Therefore, it is difficult to relate the success of a national government model or the democratic performances of the semi-presidential model (Erdem 2014: 10).

2.2 PRESIDENTIAL SYSTEM

The presidential regime was produced in the United States as a reaction to the Westminster model of democracy in late eighteenth century¹ and under the influence of the war of independence against the UK. The presidential regime was formulated by preservation of certain features of the Westminster model and alteration of certain others (Kalaycıoğlu 2005: 14).

The presidential system is based on checks and balances among the legislative, executive and judiciary branches. Teziç (2009: 443) stated that this balance is only within the legal framework and that the system is called the presidential system based on the political superiority of the executive over the legislative, although Kalaycıoğlu (2005: 15) noted that the balance is based on neither being superior over the other.

Sartori (1997: 113–117) stated the features of the presidential system to be the election of the president by the people, the inability of the parliament to remove the president from office and the power of the president to preside over the government he or she appointed or to influence the government by other means. In this framework, the presidential system was claimed to provide consensus and stability in the executive in the narrow sense. The basis of this assertion lies in the fact that the president is elected by the people for a fixed term and cannot be removed from office other than by impeachment, which is invoked in cases of major criminal misconduct, and the president is the sole owner of executive powers (Özbudun 2005: 107). Owing to the powerful executive branch, Duverger (1975: 8) described presidential regimes as republican monarchies. However, there may not always be a strong executive branch in presidential systems. Especially when the president and the majority in the legislative branch belong to different parties, problems could be experienced in legislation that the government needs to enact (Gürbüz 2000: 12).

Another feature of the presidential system is a clearly defined party of responsibility and authority (Kuzu 1997: 94). This is very important for accountability in a democratic system. Furthermore, the electorate knows who they want in the government when casting their votes, which is another aspect of the identifiability property (Gözler 2000: 41).

Similarly, Yazıcı (2005: 126–127) stated that

1. The president, who uses the executive powers alone in presidential systems, is elected directly or indirectly by the people. While the empirical president in these systems is always elected by the people,

in some systems, the people elect the president directly, and others the president is elected through an electoral college.

2. The election of the legislature, which is often called the congress, is elected by the people for a fixed term, just like the president.
3. There is no legal mechanisms by which both the legislative and the executive branches could dissolve each other.

In addition to these main parameters, another important aspect of the presidential system is the “incompatibility rule” as a result of the organic separation of powers. According to this rule, being a member of the legislature prevents an individual from taking part in the executive; a member of the parliament cannot be a member of the government (cannot be a minister). Furthermore, for the two branches to balance one another, they must both have representative legitimacy and cannot dissolve one another legally. Equality in representative legitimacy is provided by the election of both the executive branch (the president) and the legislative assembly directly by popular vote (Erdoğan 1996: 5–6).

The presidential system inevitably has a tendency to be a zero-sum game in which the winner takes all (Linz 1990a: 56). Thus it could be argued that the presidential system prepares the ground for government stability, and thus political stability, with a single-person executive. On the contrary, Köker (2013: 19) argued that it was not possible to claim that the presidential system would be more successful in creating a stable government because the presidential system is more open to political conflict, and it has been a source of real instability for government style and sustainability as a result.

Regarding the relationship between the presidential system and the political party system, Scott Mainwaring (1990: 3–4) suggested that multiparty structures within a presidential system make it difficult to maintain democratic life when compared to two-party structures; furthermore, the presidential system is less preferable for democratic stability than parliamentary systems governed by government cabinets. As an example, in the American party system model, the loose bonds between the electorate and the political parties and the presence of undisciplined, nonideological and pragmatic parties play leading roles in allowing the government to reach consensus, even when the legislative and executive branches are controlled by different parties (Özbudun 2012: 4). It could be argued that the absence of ideological polarization is significant for the effective and efficient functioning of the US government, for which the system of checks and balances is very sensitive (Bakırcı 1994: 98).

2.3 PARLIAMENTARY SYSTEM

The parliamentary system did not emerge based on long consideration and theoretical discussions; it is a product of special historical conditions in England. Limitations were imposed on the British monarchy during the thirteenth century, which over time became more of a restricted monarchy. In the eighteenth century, political developments and oddities of the royal families (for example, when the Stuart dynasty had no direct heir to the throne and when George I distanced himself from executive councils because he was not conversant in English) led to the birth of parliamentary monarchy, which expanded first to Europe and then to the world in the nineteenth century (Sevinç 2002: 112).

In this framework, England is considered the birthplace of the parliamentary system. The essence of the separation of powers that exists in the parliamentary system is depicted in the *Spirit of the Laws* by the French philosopher Montesquieu and the works of the English philosopher John Locke.

The parliamentary system, built with patience and care in the UK, has proven to be applicable in other European states (Canas 2004: 97). It can be argued that the systems currently practiced in Europe reflect various forms of the Westminster model (Cheibub et al. 2015: 975). Dynamics such as historical background and socioeconomic and cultural structure were influential in the extensive adoption of the parliamentary system by the European Union (EU) member countries. Based on the said dynamics, it was thought that EU countries were not suitable for the presidential system. It was even claimed that a president, elected by the people after the transition into a presidential system of government, would not be welcomed by the EU and might in fact be criticized (Uran 2010: 6–7).

When evaluated in terms of how the system operates, the executive branch in the parliamentary system is mandated and dissolved by the legislative branch. Constructing the government within itself and at the same time terminating the government's mandate constitutes the legislative function in the parliamentary system (Cheibub et al. 2015: 969).

The foundations of the parliamentary system could be listed as follows (Yazıcı 2005: 127):

1. The use of the executive power by a government emanating from the parliament and subject to the confidence of the parliament.
2. Limited participation of the president in executive decisions.

3. Selection of the legislative branch (the parliament) by direct popular vote.
4. Mutual powers of dissolution by legislative and executive branches through the vote of censure and abolition.

In addition to these features, the president's nonliability, the existence of the dual executive and the cooperation between the legislative and executive branches could also be considered among the fundamental elements of the parliamentary system (Kuzu 2011: 54–65; Turhan 1989: 43–56; Sartori 1997: 119; Kahraman 2012a: 434–435).

Arend Lijphart (1999: 117–118) established the main parameters of the parliamentary system and its differences with the presidential system under three important topics:

- The accountability of the government to the parliament and possible dissolution with a vote of censure.
- The method of acquiring executive mandate.
- The collective character of the executive or the one-person executive.

There are several assessments of the parliamentary system. One of the most significant positive assessments argues that parliamentary systems are designed to avoid gridlock, and any possible gridlock would be solved by the change of the legislative or the government (Cheibub and Limongi 2002: 156).

Ersin Kalaycıoğlu (2005: 23), on the fact that the aforementioned case could result in government instability, argued that increased government instability is caused by the sensitivity of the regime toward public reactions and its flexible term in office. In the same context, Yusuf Ziya Polater noted that the argument that the parliamentary system causes coup d'états and interruptions in democracy due to government instability is not quite accurate. Based on a study he conducted on the regimes and duration of uninterrupted democratic governments in 53 countries that were not members of the Organisation for Economic Co-Operation and Development (OECD) between 1973 and 1989, Polater suggested that 61% of countries governed by the parliamentary system were able to maintain a democratic regime for at least 10 years, while only 20% of those governed by the presidential system were able to accomplish this. Similarly, 18% of those governed by the parliamentary

system experienced a military coup, while 40% of nations governed by the presidential system experienced a coup d'état. It is evident that presidential systems do not necessarily provide more political stability, and it is an exaggeration to characterize parliamentary systems as always leading to weak and unstable governments (Polater 2014: 170–171; Özbudun 2013: 208).

On the topic, Tunç and Yavuz stated that government stability has a significant impact on political stability; however, government instability would not always lead to political instability. For example, the frequent government instabilities experienced in post–World War II Italy did not lead to political instability but could lead to political instability in underdeveloped nations without a culture of democracy (Tunç and Yavuz 2009: 16). On the other hand, although Zeynel Abidin Kılınc stated that the parliamentary system may be a cause of weak governments, the government system (parliamentary) is a dependent variable, not an independent one for government stability. Independent variables are sociopolitical characteristics and the electoral system (Kılınc 2015; 13).

Referring to the relationship between government stability and government systems, Fred W. Riggs (1997: 257) suggested that instead of debating which of the parliamentary and presidential systems was more democratic, it is necessary first to recognize that the parliamentary system is the more viable for structural reasons. Because, according to a study conducted on 135 nations using 1950–1990 data by Przeworski and co-workers, parliamentary systems have lasted longer than others (Riggs 1997: 257).

Burhan Kuzu, who criticized the nature of the parliamentary system, stated that it is a system of parties, sometimes it means “the political government of the majority,” or the privilege of the parliamentary majority to form a government, and this fact is universal in almost all parliamentary systems. This case is considered to be the real government of the cabinet in the UK, where there are two parties that have been mostly governments. As such, the authority of the cabinet is mentioned, and the administration is described as a “republican monarchy” (Kuzu 1996: 31). On the other hand, Juan J. Linz (1990b: 85–86), known for his criticism of the presidential system, argued that he also believes the majority of a disciplined single party in the parliament of a parliamentary system would be more powerful than the president in the United States; however, this would not be the case under all circumstances in a representative democracy.

2.4 PARLIAMENTARY SYSTEM IN TURKEY

Turkey adopted the parliamentary government system with the amendment of the 1876 constitution in 1909 (it is necessary to mention that the period under the 1921 constitution should be considered as an interruption in the parliamentary system). There are certain differences among the parliamentary systems established with the 1924, 1961 and 1982 constitutions. The current 1982 constitution attempted to rationalize the classical parliamentary system established with the 1961 constitution (Üskül 2013: 531).

In this framework, a structure prioritizing a powerful executive but creating a dual executive was established with the 1982 constitution in Turkey. Furthermore, the content of the 1982 constitution differs significantly from the previous constitutions. The 1982 constitution grants the president a long list of powers, and these powers have been considerably expanded (Turhan 1992: 162). In addition, the president could establish pressure on the Council of Ministers through the National Security Council (NSC), over which he or she presides and determines the agenda. This can be regarded as an institution of guardianship, by which the president prescribes the agenda, presides over the constitution and can force the implementation of the policies he or she desires (Heper and Çınar 1996: 491). Ultimately, the reason for the strengthening the dual executive branch in Turkey is thought to be a term approach within the framework of the law. The executive branch has been strengthened within the parliamentary system, which has led to the domination of the executive branch over the parliament. Furthermore, it has been claimed that the lack of the intraparty democracy in the Turkish political party system and the hegemony of the party chairman over the parliament members provided the grounds for the dependence of the legislative on the executive branch (Bilir and Üstün 2015: 116). In this framework, the fact that the theoretical legislative executive distinction in the parliamentary system is not clearly seen in Turkey and a situation that favors the executive led scholars to search for an alternative system (Keser 2011: 54).

Besides the scholars, the ruling JDP's election manifesto stated that the current parliamentary system is far from satisfying the minimum democratic requirements and that the system is barely a system of guardianship constructed by the bureaucracy after the 1960 military coup (JDP 2015: 31–34).

In general, the problems in the Turkish parliamentary system could be listed as follows (Türk 2011: 35).

- Complex structure of the 1982 constitution.
- Electoral process and the extensive executive powers of the president.
- Dual executive branch.
- Limitations on the prime minister's executive powers and presidential veto.
- Short-term and weak multiparty coalition governments.
- Inactive, indecisive and inefficient governments during the 1990s.
- Slow-paced legislation.

In addition to these criticisms, it was also argued that the system created instability, resulted in a military guardianship, increased the risk of authoritarianism and did not allow separation of powers. Furthermore, its implementation differed from other examples in the world (Bayram 2016: 49).

The main point of the criticism against the parliamentary system is the powers bestowed on the president. It was expected that, besides the president's natural nonliability in the parliamentary system, the president should also lack powers based on the current British parliamentary system. Furthermore, based on the characteristics of the parliamentary system, it is important that the president should not be elected by the people. A presidential figure elected by a popular vote would inevitably mean political representation and would likely disrupt the internal balance of the parliamentary system (Erdoğan 1993: 29; Zarplı 2015: 176). It was also claimed that a system in which the president is elected by the people approaches a structure and practice that is similar to a semi-presidential system (Elgie 2011: 1). Thus Yavuz Atar stated that a constitutional amendment should abolish the powers of the president that are not in line with the parliamentary system and the election of a president, whose powers are within the boundaries of the classical parliamentary system, by popular vote would not affect the structure or the operation of the system (Kahraman 2012b: 275).

Şeref İba (<http://paperroom.ipsa.org/papers/view/104>, p. 5), indicating that the election of the president by the people would inevitably introduce a system change, projected the future after the constitutional amendment that changed the presidential election procedure in 2007 and said that the “departure from the parliamentary system” is inevitable.

In fact, he stated that, with the said change, Turkey would be confronted with a new system and the emerging semi-presidential system would lead to the possibility of conflicts and competition between the president and the prime minister, even though they have the same political beliefs because the system was based on a dual executive.

Finally, as an alternative to the existing parliamentary system, models such as rationalized parliamentarism, semi-presidential and presidential systems are being discussed both in academic circles and political parties.

2.5 RATIONALIZED PARLIAMENTARISM

The extensive emphasis on the parliamentary system was due to the 150-year parliamentary tradition in Turkey (Topukçu 2015: 82–83). Thus when Turkey’s 1961 and 1982 constitutions were in force, rationalized parliamentarism was proposed to resolve the problems that arose from the parliamentary system (Hakyemez 2012: 276).

By *rationalized parliamentarism*, it is meant that various constitutional instruments and procedures should be introduced to the system to maintain the main characteristics of the parliamentary regime and to stabilize the government (Özcan 2013: 492). In this context, as Teziç mentioned, to overcome government crises in the classical parliamentary system, certain countries needed “renovations” of the system. As Teziç put it, they tried to “legitimize the politics” with these renovations (Teziç 2007: 427; Tunçşık 2015: 9). Sample constitutions that include instruments of rationalized parliamentarism are the 1949 German constitution, the 1958 French constitution and 1982 Turkish constitution (Gözler 2010: 622).

Thus the main reasons behind the rationalized parliamentarism proposal were first to ensure government stability and then to maintain political stability. In this context, rationalized parliamentarism serves the purpose of preventing the dissolution of the government. The main tools of rationalized parliamentarism are the establishment of restrictions on the motion for a vote of confidence²; the implementation of cooling-off periods³; the requirement for absolute majority in votes of censure, while counting only nay votes in vote of confidence⁴; and the institution of a vote of confidence under the threat of dissolution and constituent vote of censure (Özcan 2013: 492).

Cüneyt Yüksel, on the other hand, considered the prime minister’s right to demand the dismissal of the ministers in the current constitutional

system as a development toward rationalized parliamentarism and proposed a number of new mechanisms. These suggestions can be listed as follows (Yüksel 2013: 62–67):

- The president should have the power to renew parliamentary elections to prevent system gridlock and to rationalize parliamentarism.
- In the event that certain persons, including the President of the TGNA, elections and in taking decisions, if such qualified majority is not available, such arrangements for electing the most votes in the last round will also reduce seeking for reconciliation and a consensus among political parties.
- An individual should be prevented from having parliamentary membership and cabinet membership at the same time; thus it is emphasized that the regulations that will allow the appointment of the members of the Council of Ministers from outside the parliament will contribute to the stability of the government together with constitutive censure (Yüksel 2013: 62–67).

In short, the rationalized parliamentarism proposition is expressed by circles who consider the road to stability to be through the limitation of the dominance of the parliament. In France, the source of inspiration for the opposition circles in Turkey, the powers reflecting a different perspective of rationalized parliamentarism aimed at establishing a powerful executive in the 1958 Fifth Republic constitution could be listed as follows (Çelebi 2012: 58):

- Two meeting sessions of three months each in a calendar year for the assemblies.
- Dominance of the government in determining the assembly agenda.
- Limited rights of members of parliament to motion or request for change.
- Preliminary examination of parliament bylaws by the Constitutional Council.
- Limitation of the number of permanent commissions.
- Comprehensive control of the government on determination of legislative procedures.
- Strict limitations about the budgeting process.
- Possibility of passing a motion without a vote (A 49/3).
- Strict rules on the motion of censure.

As stated by Çelebi based on the French experience, the proposal for “strengthened parliamentarism” was presented by opposition circles and especially in the election declarations of June 7 and November 1, 2015, by the main opposition party in Turkey, the Republican People’s Party (RPP). According to Muharrem Sarikaya (January 3, 2016), the RPP opened the doors to the possibility of rationalized parliamentarism. By contrast, Osman Can (May 9, 2015) opposed rationalized parliamentarism, claiming that the legislative would almost become one of the government’s executive instruments.

In conclusion, it seems difficult for the move toward rationalized parliamentarism to ensure government stability while maintaining political stability in Turkey. It is not possible to establish political stability on parliamentary grounds in Turkey, and it would be difficult to maintain political stability in the short or medium term due to the unsuitability of the general political atmosphere.

NOTES

1. Lijphart mentioned the 10 main characteristics of the Westminster model: bestowing the power to a single party and its government, dominance of the cabinet over the political system, two-party system, majority-based election system, uncoordinated and competitive pressure of interest groups on the government, central (monolithic) state, single house parliament or dominance of one house over the other in the government, amenable constitution, lack of constitutional jurisdiction and central bank controlled by the executive (Özsoy 2009: 27).
2. This prevents the use of an important institution such as the motion of censure in an informal way and restricts the right to a motion of censure in various forms, making it difficult to implement. For example, according to the second paragraph of Article 49 in the 1958 French constitution, if the motion of censure is rejected, the deputies who motioned the censure cannot motion another censure during the same session (i.e., in practice a half year). Thus a deputy who knows he or she has the right to a motion of censure only once in a legislative year or period would be hesitant to use that right in bad faith. A similar arrangement is also present in the Greek constitution. According to the 1975 Greek constitution, no new censure can be motioned until six months after the rejection of a motion of censure (A 84/2) (Gözler 2010: 624).
3. To reduce the influence of emotional factors on important votes that could topple governments and to enable the deputies to have time to consider the

vote more calmly, the votes are postponed one or two days after the relevant decision (Gözler 2011: 270).

4. The most common way to make it difficult to dismiss the governments is to require an absolute majority of the total number of members, not the ones who are present during the vote in the vote of censure. Thus the votes of the absent members could be considered as a vote of confidence as mentioned in the fourth paragraph of Article 99 of the constitution of 1982 or the second paragraph of the 49th article in the French constitution. The same French constitution, however, does not require a vote of confidence even for the establishment of the government (Gözler 2010: 625).

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Historical Background of the Presidential System in Turkey and a General Assessment of the Proposed Justice and Development Party's Presidential System

Abstract This chapter explores the historical trajectory of the presidential system debates in Turkey. It is noteworthy that in Turkish political life, from the day of the foundation of the republic until the first military coup (1960), despite the initial one-party and consecutive multiparty regimes, there were periods of strong party leaders, presidents and other political figures.

Keywords Justice and Development Party • Tayyip Erdoğan • Reconciliation Commission for the new Constitution • Executive powers • Turkish Grand National Assembly

3.1 HISTORICAL BACKGROUND OF THE DEBATE ON PRESIDENTIAL SYSTEM IN TURKEY

Although the parliamentary experience in Turkey dates back 150 years, it could be stated that the pursuit for a presidential system was discussed during certain periods. Polatoğlu, who established a general framework for why such discussions took place in Turkey, noted that debates on the presidential system emerged when political party leaders, who had active political lives as prime ministers with executive powers, aspired to become president. However, the presidency, which is the highest office in the

state, carries only symbolic powers due to the principles of a parliamentary democracy and is a passive office compared to the prime ministry (Polatoğlu 2013: 14).

After addressing the abovementioned general framework, it would be appropriate to place the debate on the presidential system in historical perspective and in different periods. In this context, it is noteworthy that in Turkish political life, from the day of the foundation of the republic until the first military coup (1960), despite the initial one-party and consecutive multiparty regimes, there were periods of strong party leaders, presidents and political figures. Mim Kemal Öke, who approached the topic from a different perspective, referred to the periods led by Atatürk, İnönü, Menderes and Bayar as *de facto* presidential systems, which had relatively authoritarian regimes. Mim Kemal Öke, who accepted each of these men as a president, stated that there were differences in practice and that during the Atatürk period, in particular, an authoritarian regime was essential to implement revolution and reforms (“Sabah Tartışmaya Açıyor [Sabah Discusses]” 2005; Beceren and Kalağan 2007: 176). In the subsequent process of the construction of the 1961 constitution, there was, in fact, an open discussion on the presidential system promoted by those who favored a strong government, but this idea was rejected by the majority. According to Yavuz, the ignored and externalized political views of the time established the basis of the debate on the presidential system that has lasted until today (Yavuz 2000: 116; Genel 2015: 66).

Finally, the discussions on the presidential system became evident in Turkish politics during the post-1980 period. It could be stated that debates on a system change under the 1982 constitution intensified for the first time between 1987 and 1990.¹ As stated by Turgut Özal, who led the single-party government back then, the discussions were inspired by the coalition governments established between 1961 and 1980 and the accompanying instability. As a matter of fact, as Özal considered the presidential system, he stated that coalitions in Turkey, where the convention of consensus is weak, were ineffective and waste of time for the country. On the other hand, he argued that the presidential system would be better for Turkey due to its heterogeneous structure, because a president elected by the majority would more honestly represent the nation (Yılmaz 2013: 630). Subsequently, the debate on the presidential system continued under Demirel in 1997. Demirel’s requests for transformation to the presidential system were strongly opposed by Prime Minister Ecevit (Fendoğlu 2010: 22). Demirel’s frequent requests

were based on “*democracy*,” and “*proper functioning of the state*,” including the need for “*stability*,” “*facilitating formation and sustenance of governments*” and “*prevention of coup d’états*” (Oder 2005: 68). Demirel even mentioned that the requirement for a system change in Turkey was based on structural problems, which could be resolved with the checks and balances built into the presidential system (Türk 2011: 42).

Based on these discussions, İçener assessed the Özal and Demirel periods, stating that the common denominator was the fact that the political experiences and visions of these men forced them toward the idea of a system change. While Özal predominantly stressed the presidential system, in Özal was predominant, Demirel favored the idea of a president elected by popular vote who would have the power to dissolve the parliament (İçener 2015: 333).

However, Demirel’s views on the presidential system changed after his term of office was over and he left active politics. At Başkent University, in a speech given at a conference celebrating the 90th anniversary of April 23, organized by the Atatürk Principles and Revolutionary History Research and Application Center (ATAMER), he assessed the applicability of the presidential system in the only successful example, the United States, and rationalized the failure in other national experiences, including his reservations for the presidential system in Turkey.²

As the Justice and Development Party came to power in 2002, the debate on the presidential system, which was not mentioned in the party program, was voiced by individuals from time to time. Within this context, about two months after the JDP came to power, the presidential system was proposed by Burhan Kuzu as a personal motion in January 2003. In April 2003, Tayyip Erdoğan, who cited the bureaucratic oligarchy, proposed an “American-style presidential system.” In succession, the current justice minister, Cemil Çiçek, also made statements supporting the presidential system during December 2004 and January 2005 (Oder 2005: 57–59).

In this context, it is possible to argue that the propaganda on the presidential system by the Justice and Development Party during its initial years in power was limited and expressed only in rhetoric. However, Tayyip Erdoğan, who became the prime minister in the three general elections in which he participated, stated at every opportunity that the government system in his mind was a presidential system. Erdoğan’s views on this issue can be summarized as follows: On April 21, 2003: “My only desire in politics is the presidential or semi-presidential model. The

ideal version of this system is the one implemented in the United States.” On January 5, 2005: “The debate on the presidential system may be beneficial for Turkey, but it is not on our agenda at this point in time.” On February 15, 2006: “I want the presidential system as well, but the conditions are not available right now.” On April 18, 2010: “I have positive views on this [presidential system] for the system to work efficiently. For achieving more rapid results.” On September 10, 2010: “We have no prejudice. Eventually, if necessary, there could be a referendum on this, but for now it is not a must for us.” On September 25, 2010: “I mentioned the issue to open it for discussion. There is much for politics and our people to gain from this debate.” On February 2, 2011:

In my opinion, the people should discuss within the democratic parliamentary system and it should be discussed. To avoid the debate among the nation, to hesitate, is to pull away from democracy. Leaders are always alone, there could not be a second person that the leader could share the leadership with. But there is a phenomenon called ‘the team spirit’, there is a phenomenon called ‘team play, there is a phenomenon called ‘collective intelligence’. I consider that the people of the nation should discuss these concepts, recognize them and personally I think that the presidential system would have beneficial consequences. This is my opinion. Mr. Bahçeli could think otherwise, someone else could think otherwise. I respect their opinion, but please, this is my opinion, they should respect my opinion as well. ... There is a presidential system, there is a semi-presidential system. Why are we bothered by these? Here is the USA, here is France. ... There is the chancellor in Germany, there are such systems, there are presidential offices authorities, empowered ... only representation in some countries. ... These are also these. I do not think anyone has the right to be offended by these discussions. Let us have a discussion, nobody should be disturbed by it. (Fendoğlu 2012: 47–48)

There was no special mention of the presidential system in the June 12, 2011, election platform by the Justice and Development Party, which won the third consecutive election. However, in an interview he gave toward the end of the election campaign, Erdoğan complained about the “bureaucratic oligarchy” and stated that the presidential system was his priority (“Erdoğan: Gönümde Başkanlık Sistemi Var [Erdoğan: I want the Presidency System]” 2011; Aslan-Akman 2012: 87).

After the 2011 general elections, with the 24th legislative session, it could be argued that the JDP started to take concrete steps in addition to the rhetoric and propaganda. Thus in November 2011, it became a JDP

motion under the title “Executive Proposals” in the Reconciliation Commission—formed by equal members from four political parties represented in the parliament and headed by Çiçek, then chairman of the parliament—to draft a civilian constitution. Among these four parties, only the Justice and Development Party proposed the presidential system, and the other parties strongly opposed this system. The failure of the JDP to obtain the required number of seats to change the constitution led to the failure of the motion.

In this context, the JDP based its 2015 election strategy on winning at least 367 deputies so they could amend the constitution with only JDP votes and establish the presidential system via the constitutional amendments. (The president announced that the target was 400 JDP deputies in presidential election rallies.) In the election rallies, introduction of the presidential system and amending the representative executive powers of the president were widely discussed. In fact, the opposition claimed that the presidential system would turn into a dictatorship. All the same, Erdoğan stated that “half of the G20 countries are governed by the presidential system” (Mülayim 2015: 41).

These debates naturally were also manifested in the election platforms. As a matter of fact, the Justice and Development Party, in the general elections of June 7, 2015, included its presidential system proposal in the election declaration and expressed those view in the campaign process. The ruling party stressed that the rationale behind the adoption of the presidential system was to establish a participative, pluralist and effective government model and that the current parliamentary system was constructed after the 1960 coup d’état to establish the guardianship of the bureaucracy over the political system, resulting in weak and instable coalition governments. The solution naturally was the presidential system because it represents an active and dynamic government that the New Turkey needs (JDP 2015: 38–41). The opposition, on the other hand, conducted an anti-presidential campaign, which they initiated in parliamentary group speeches and effectively in the field, appealing to the masses with anti-presidential convictions.

In the Justice and Development Party November 1, 2015, general elections charter, the presidential system proposal was included with the same motives; however, it was not used as the main theme in the election rallies. While the debates on a postelection distribution in the parliament

and civil constitution were ongoing, the military attempted a coup d'état on July 15, 2016. The government, opposition and, most important, the people fought off the coup, and democracy was protected. Following this insurrection, rallies were held with the participation of the people and collaboration of the government and the opposition; the largest of these organized rallies took place on August 7, 2016, in Yenikapı, Istanbul. The period of unity, christened the “Yenikapı Spirit” in dedication to this union, lasted quite a short time. And then, a political atmosphere prevailed in which each political party prioritized its own political agenda, leaving behind the culture of consensus. However, Devlet Bahçeli, who opposed the presidential system since the beginning and voiced his opposition harshly during the electoral campaigns before the June 7, 2015, and November 1, 2015, general elections, astonished the whole country with his parliamentary group speech on October 11, 2016, in which said that he would welcome a motion in the parliament for the presidential system and if the vote required a referendum, he would respect the decision of the people.³ Bahçeli’s outburst mobilized political lobbies and received a positive response from the JDP; bilateral talks started immediately between the two parties to propose a constitutional amendment. On December 10, 2016, the motion was presented to the Turkish Grand National Assembly by the JDP parliamentary group with a total of 316 signatures. The motion was negotiated in the TGNA on December 12, 2016, and sent to the Constitutional Commission on December 20, 2016. The motion’s 21 articles were reduced to 18 articles during the nine-day-long negotiations and the proposal was approved by the commission on December 30, 2016. Negotiations in the general assembly began on January 9, 2017. The second round of negotiations was completed on January 21, 2017. The president approved the constitutional amendment and the referendum process was initiated.

3.2 A REVIEW OF THE PRESIDENTIAL SYSTEM PROPOSED BY THE JUSTICE AND DEVELOPMENT PARTY

The first concrete presidential system proposal in Turkey was presented after the 2011 general election by the 24th session of the parliament as a Justice and Development Party motion under the title “Executive Proposals” to the Reconciliation Commission for the new draft of the

constitution. The model proposed in Turkey has some unique features. The powers endowed to the president would be as follows, based on the proposed text:

- In the presidential system proposal, the legislative, executive and judiciary powers assigned to the president as head of state in Article 104 of the constitution within the framework of the parliamentary system would be transferred to the president in general.
- In the presidential system proposal, it is stipulated that the president would be the head of the state and, in this capacity, would represent the Republic of Turkey and the unity of the Turkish nation and would pursue orderly and harmonious operation of state institutions. The powers assigned to the president of the republic under Article 104 of the existing 1982 constitution would be transferred to the president.
- The presidential system proposal states that the executive powers would be bestowed to the president alone, similar to other presidential systems, and hence the president would conduct general political affairs.

Along with these powers, the following were consistent with the existing legislative powers of the president outlined in Article 104 of the 1982 constitution:

- Giving an inaugural speech on the first day of the legislative year in the Turkish Grand National Assembly if the president deems it necessary.
- Giving an annual message to the assembly about the domestic and international policies.
- Issuing the laws.
- Returning the laws to the assembly for renegotiation.
- Making a plea of unconstitutionality to the Constitutional Court.

On the other hand, the power of the president to call the TGNA to assemble when necessary, which is among the powers of the president under the current legislature, was not listed among the powers of the president in accordance with the principle of strict separation of powers, which is the essence of the presidential system.

Within the general framework of the presidential system and among the powers of the president, the issue that caused the most heated debate is the power of the president to issue “presidential decrees.” The president is even authorized to issue regulations concerning the enforcement of the laws. The president is bestowed with legislative powers and when the president vetoes a bill approved by the parliament, the latter could reapprove the bill only with a three-fifths majority (330),⁴ which could cause the president to have disproportionate powers over the legislative. In fact, the president may issue a presidential decree while, on the other hand, forcing the legislative to a qualified majority by vetoing the bills and leading to gridlock in legislative activities.

The power to issue presidential decrees, however, contradicts the principle of the separation of powers since it concentrates both legislative and executive powers in one individual. In this context, it is necessary to restrict presidential powers to a certain extent. For example, it is conceivable that the president could issue a decree to replace the budgetary act via executive power with the condition that it be under the supervision of the legislative branch (without the presence of provisionary and reevaluated budgets). Or the executive branch could issue decrees on certain administrative regulations. On this subject, Gözler (2000: 44) claimed that the president should possess the abovementioned powers with the assumption that the system would not function consistently and effectively if the legislative body did not have the decision-making majority. However, it should be kept in mind that it would be an invitation for a one-man dictatorship if the said framework is not kept narrow and if unlimited freedom of action is bestowed on the executive.

In the presidential system, the executive powers belong to a single authority. Based on this convention, in all countries where the presidential system is in effect, the vice presidents are selected on the same ticket as the president, and the ministers are directly appointed by the president from outside the parliament.

In addition to the legislative powers in the presidential system, the president has the following executive powers listed in Article 104 of the constitution:

- The authority to appoint representatives of the Turkish state to foreign countries and to receive the representatives of foreign countries to Turkey.
- The authority to approve and issue international agreements.
- The authority to represent the commander-in-chief of the Turkish Armed Forces on behalf of the Turkish Grand National Assembly.

- “The authority to decide on the use of Turkish Armed Forces,” granted to the president in the 1982 constitution, will be transferred to the president in the presidential system, and the president could demand only the declaration of martial law or a state of emergency from the parliament due to the strict separation of powers.

Furthermore, the president would have the powers to appoint half of the Council of Higher Education (YÖK) members, rectors and senior public officials (ambassadors, governors, etc.). However, in the United States, the president needs the ratification of the senate when appointing senior officials due to the principle of appointment of critical missions with consensus among the powers. In Turkey, in the proposed system, there is a debate that the president, who would make all appointments as the sole decision maker, would alone be the government.

The fact that half of the members of the Constitutional Court, Council of State and HSYK would be directly appointed by the president would result in the extension of the influence of the president into judiciary, which is supposed to supervise the president, thus carrying the danger of uniting powers under the president and dissolving the separation of powers.

The regulation that would occupy the agenda the most and is the most crucial for the sustenance of the system in the presidential system proposal is the power of the Turkish Grand National Assembly and the president to renew the elections. It was stipulated in the motion that “the Turkish Grand National Assembly or the President alone can decide on the renewal of the elections for both bodies. In addition, if the decision to renew the elections is made in the second term of the president, the president may once again be a candidate. The term of office of the President and the Assembly elected thusly is for five years.”

The power of the president and the legislature to dissolve each other was considered for the purpose of removing a possible conflict between the two wings of political legitimacy: the legislative and the executive. The power of dissolution should be assessed jointly with the other powers bestowed on the president (power to issue presidential decrees, adoption of vetoed bills by a qualified majority in the legislative). It could be expected that the power to dissolve both the presidency and the legislative body by the president—who is elected for a fixed term, who cannot be dismissed without an impeachment process and who has the ability to cause gridlock and disable the legislative with presidential decrees—would force the president into elections, which is the only institution of accountability in democracies, to limit the president’s powers not controlled by the legisla-

tive and to prevent a probable political crisis. On the other hand, the most legitimate way to overcome a possible systemic crisis between the legislative and executive and to prevent nondemocratic interventions as a result of gridlock is to renew and maintain the system through elections. However, it should be noted here that if the president, whose term is for 5 years, decided to renew the elections at the end of his or her second term, it would be possible to extend the term in office for another 5 years. This clause should be amended to state that the president would fulfill his or her 5 years in office if reelected in such a manner. It is reasonable to limit the term of office of the president to a maximum of 10 years, based on the unity of the executive and the personal character of the government. However, it should be kept in mind that if the present powers mentioned in the proposal are awarded to the president in addition to the power to dissolve, this would result in the president possessing extensive powers over the legislative, contrary to the principle of separation of powers.

NOTES

1. At the end of 1987, the presidential system was debated in the NSC, along with the 10% threshold in national elections, but the discussions were not included in the final declaration of the meeting (Oder 2005: 31).
2. Demirel said “the presidential system was something that I defended years ago. It’s not easy to argue for the system of the prime ministry. But first, we need to operate the existing system we have. Can we operate this? Whichever system you introduce, you will do it with the existing cadres. Inspect the political cadres, the administrative cadres. There was a surge and the political cadres were gone. We are in a state of manpower shortage. There are no trained people. You would find time, you would find opportunities, but and you would not find trained people. It is difficult to find trained politicians. There is no school for that. A purge arrives, an individual who was a parliamentarian for 15 years becomes unemployed. That should not happen. As the governments change, the new one decimates the system because ‘he is your man, this is mine.’ Even Qur’an says ‘give the duties and responsibilities to those worthy of them.’ If you would establish the presidential system from scratch, you need to consider it very well. The presidential system is not merely the election of the president by the people. The only country that function well under presidential system is the United States. There are presidential systems in South America, but every 7 years there is a revolution and they would topple the president for a new one.” Demirel also stated that the success in the United States is due to the federal structure and the distribution of powers and noted that every federal state conducted its own affairs and that the US Congress was the greatest institution in the history of democracy. Demirel stressed, “so you will put your Assembly in such a condition, there will not be

- a government and you will elect the government. Otherwise, you cannot remove all the elements and just state that ‘I will be the president.’” (“Demirel, Başkanlık Sistemini Değerlendirdi”, *Cumhuriyet Newspaper*, April 19, 2010).
3. “Today, as the Republic of Turkey is in a struggle for survival, a conflict between the president, who occupies the highest office in the political government and the state, and law is very wrong and dangerous for our future. There are two alternatives for us to remove this imminent danger: The first and the most adequate and healthy for us, is for the president to stop imposing a de facto presidency and withdraw to constitutional and lawful boundaries. If this will not be the case, secondly, it would be necessary to search for ways to legitimize the de facto situation rapidly. In any civilized and democratic country in the world, it is not possible to consider or observe a government and power structure that commits a crime every day. Therefore, if the Justice and Development Party [JDP] will continue its commitment to the presidential system, there will be two alternatives again: First, the AKP should motion a constitutional amendment draft that they have been working on if available, including the articles that were agreed upon previously, to the TGNA. The deputies will vote based on their principles and beliefs, and by listening to the voice of their conscience and they will reach a decision. Secondly, this constitutional amendment will be enacted in the General Assembly of the Grand National Assembly with over 367 votes, or it will be submitted to public opinion via a referendum if it receives at least 330 votes. The Nationalist Movement Party respects every decision made by Turkish people and considers it a mandate... The will of the people is final, and we consider it an order” (Nationalist Movement Party Chairman Devlet Bahçeli’s Speech at the TGNA Party Group Meeting 11 October 2016, for details see www.mhp.org.tr/htmldocs/mhp/4136/mhp/BMM_Group_Group_Group_Hosting.html).
 4. The difference derives from the constitution change draft issued in 2011. In the 16 April 2017 referendum, the number of the MPs changed, increasing to 600. In this chapter, it indicates the new composition of the TGNA as 600. So two-thirds majority equals 360 here.

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Presidential Government System in Turkey

Abstract This chapter outlines the current opportunities and obstacles for establishing a presidential government system in Turkey and discusses the negotiations between the Justice and Development Party and the Nationalist Movement Party.

Keywords Nationalist Movement Party • Presidential government system • Turkish Grand National Assembly • Justice and Development Party • Constitutional amendment

The presidential government system emerged after it was brought up by Nationalist Movement Party Chairman Devlet Bahçeli on October 11, 2016, at the TGNA group meeting, as described earlier. Later on, Justice and Development Party and the Nationalist Movement Party started on the contents of the motion. As a result of negotiations between the two parties, the 21-item constitutional amendment proposal was sent to the Turkish Grand National Assembly for discussion. In the commission stage, 3 articles were removed from the proposed amendment. The motion, which included 18 articles, was voted in the General Assembly and approved at the referendum threshold. The president approved the proposal to be taken to the referendum. However, it should be noted that the content of the motion that was prepared in 2016 and enacted in 2017 differed from the document titled “Executive Proposals,” which was presented to the Parliamentary Reconciliation Commission in 2013.

Although the power of the president to appoint half of the members of the Constitutional Court, Council of State, and HSYK, which was stipulated among the judiciary powers of the president in the “Executive Proposals,” was against the separation of powers and was discussed in the public arena, it was included in the current motion without any changes. It is stipulated in the presidential system of government package that 6 out of 13 members of the Council of Judges and Prosecutors (HSK)—by removing the phrase ‘High’ from the council’s official name—will be appointed directly by the president. The justice minister, and the undersecretary of the ministry of justice, who chairs the meetings when the minister of justice is unavailable, are natural members. Three out of the 4 members appointed directly by the president will be selected from ordinary justice judges and prosecutors and the remaining one will be selected from administrative justice judges and prosecutors. Of the remaining 7 members, 3 will be selected by the TGNA from Court of Appeals members, 1 will be selected from Council of State members and 3 will be selected from the faculty of university departments of law, determined by lawyers and attorneys-at-law.

The Joint Committee of the Turkish Grand National Assembly, composed of members of the Constitution and Justice Commissions, will appoint three candidates for each membership. The commission will, initially, appoint three candidates for each membership by a vote of two-thirds of the total number of members in the first round and by three-fifths of the votes in the second round. If no one receives enough votes, the candidate will be selected by lot between the two candidates who received the highest votes in the previous round. Following the same procedure, the members will be selected by the General Assembly of the TGNA.

In cases when the executive and legislative branches are dominated by the same political tendency, it is technically possible for the president (a member of a party and possibly the chair of that party) to determine all members of the Council of Judges and public prosecutors who have recently lost the adjective *supreme* from their titles. Even if this scenario does not occur—that is, the members of the CJPP elected by the legislative branch do not share the political beliefs of the president—the direct election of 6 out of 13 members by the president and the election or support of only 1 member by the TGNA means the control of the council would fall into the hands of the president, and the president would have the initiative in the Council of State and the Court of Appeals and even in the Constitutional Court. Because one-quarter of the members of the Council of State are directly elected by the president and the remaining

members are elected by the HSK, all members of the Council of State would, in effect, be determined by the president. The situation in the Court of Appeals is not different. All members of the Supreme Court of Appeals will be elected by the CJPP by absolute majority. In turn, the majority of the HSK were selected by the president; thus the members of the Supreme Court of Appeals are, in effect, selected by the president. One-third, or 5 members, of the Constitutional Court are appointed by the Council of State and the Supreme Court of Appeals, which means these members are ultimately appointed by the president as well (3 members will be appointed by the Supreme Court of Appeals and 2 members will be appointed by the State Council among three candidates nominated for each vacancy). Consequently, the CJPP would enable control over ordinary, administrative and constitutional jurisdictions in addition to conducting all appointments, disciplinary actions and personal record processes for ordinary and administrative arenas. However, government circles claim that the selected members would serve for a term of four years and since the composition of the deputies in the TGNA could change dynamically and kinetically, determination of the members by the TGNA would enforce the democratic legitimacy of the council.

Although it was also envisaged in the draft presented in the 24th session that legislative and executive elections would not be conducted concurrently in ordinary terms, with the exception of mutual dissolution, in the new government system package simultaneous elections were presumed. Based on the new government system proposal, it could be argued that the presidential candidate would lead the election campaign because he or she would have an organic connection with the party, and there is nothing to prevent the president to be the party leader. Based on the fact that the executive and legislative would have a similar composition, it could be argued that this would maintain the stability of the system; however, it could also lead to a legislative that is totally controlled by the executive. On the other hand, there are contrary national experiences as well. In Brazil, the only country where presidential and legislative elections are held concurrently, the races for presidential and parliamentary elections differ significantly. For example, Lula da Silva received 49% of the votes in the 2006 presidential elections, while his party received only 15% in the parliamentary elections (Elgie et al. 2014: 671).

Examination of the practices of other countries demonstrates that in the United States, Argentina and Mexico, presidential and legislative elections are partially concurrent (renewal of a part of the legislature in

mid-term elections), and in Chile and South Korea the elections are not (Gülener 2016: 17–18). In Turkey, the regulation introduced by the constitutional amendment has very limited application throughout the world. On the premise of concurrent presidential and legislative elections in Turkey, Levent Köker argued that simultaneous formation of the executive and legislative branches would destroy the rationale of the typical presidential system, in which these branches should exist as separate institutions. Such elections would create a situation in which the president, who is the executive and the party leader at the same time, would end up controlling the legislative since the two organs would be elected at the same time. In fact, he claimed that, due to the political culture and tradition in Turkey, which emphasizes strict party discipline, the abovementioned consequence would occur naturally and this claim should not be considered an empty prophecy or a delusion (Köker 2013: 19–20).

Also, both presidential and legislative terms were determined as five years, which is a relatively long period of time. In this context, it was observed that other countries, except Mexico and South Korea, follow the example of the United States and hold elections every four years (Gülener 2016: 19). (In Mexico, presidential elections are held every six years, and in South Korea, every five years.) Holding simultaneous legislative and executive elections every five years would not reflect the changing and evolving democratic tendencies in cases when the legislative is controlled by the executive. Especially when the singular executive and the legislature majority have the same political beliefs, it would lead to a zero-sum game due to the nature of the system. The winner would take all, and the loser would have no role. The system would be far from being democratic for the “others,” who would have no representation in the democratic system.

With the legislated presidential government system, the supervisory power of TGNA on the cabinet and the ministers, which was regulated under Article 87 of the 1982 constitution, was abolished. In the parliamentary system, the related powers were listed as interpellation, motion of censure, parliamentary investigation and parliamentary inquiry; in the new regulation, the institution of censure was removed from the active control mechanisms. The institution of censure, which is an instrument used by the legislative branch to theoretically supervise the executive branch in parliamentary government systems (Atlay 2010: 98), was included in some countries in which the presidential system is implemented; in others, it was excluded (in the United States, which is considered a functional

model for the presidential system worldwide, the censure institution was not adopted, whereas in some Latin American countries, such as Peru, Argentina and Venezuela, censure is practiced). When the level of democratic culture in Turkey is considered, adoption of the censure mechanism would be adequate in our opinion.

In the regulation enacted for the presidential government system, only written questions to the deputy president, interpellation and parliamentary inquiries were included as supervisory instruments of the executive by the legislative. For the ministers, the previous parliamentary system required one-tenth of the votes (55 votes) to motion an inquiry and three-quarters of the votes (413 votes) for referral to the High Council; for the president, one-third (184) of the votes for inquiry and three-quarters (413) of the votes for referral to the High Council were required (the president could be tried only for treason). In the presidential system, absolute majority of the TGNA members (301 votes) is required for parliamentary inquiry, three-fifths (360 votes) of the votes for inquiry and establishment of a commission, and two-thirds (400 votes) of the votes for referral to the High Council. Thus the new regulation makes the supervision of the ministers difficult, but makes it easier for the president. However, because the president would directly or indirectly appoint 12 of the 15 Constitutional Court members who would try the president and ministers with the title of High Council, the functionality of a parliamentary inquiry would be doubtful.¹ On the other hand, in paragraph (B) of provisional Article 21 of the presidential government system proposal, if the new government system is enacted, the Assembly Rules of Procedure should be regulated accordingly within 6 months. As is known, the Parliamentary Rules of Procedure is a sign of the effectiveness of the supervision powers (written questions, parliamentary inquiry and interpellation) of the legislature. Regulations in the bylaws that will open the way for the members of the legislature to use the means of supervision will mediate the rise of democratic standards. After the April 16, 2017, referendum, the proposal on Assembly Bylaws no. 2/1783 dated July 7, 2017, was presented with the signatures of four Justice and Development Party and Nationalist Movement Party deputies. Article 12 of the proposal stipulated amendment of the first and second paragraphs of Assembly Bylaws Article 102 and abandons the requirement of reading interpellations and parliamentary inquiries in the General Assembly and instead requires notifying the government about the proposal and its abstract. The reading of the motions of interpellations and parliamentary inquiries

in the General Assembly has an impact, albeit limited, on the public scrutiny of the executive. With this regulation, it is expected that the use of such scrutiny by the parties in the parliament may become even more dysfunctional. The motions on the abovementioned supervision mechanisms are measures to prevent the government party majority from determining the agenda of the General Assembly when there is no consensus in Advisory Committee meetings. Government circles claimed that the General Assembly would work more efficiently and be more functional thanks to this regulation, while the opposition (even if it is used outside its purpose) argued that in practice it would render an executive without scrutiny.

The most controversial of the amendments enacted within the framework of the presidential government system was the removal of the last paragraph of the Article 101 of the constitution, which stated: “President elect should be dismissed from the party he is a member of, if available,” legalizing the political identity of the president, who was supposed to be impartial and independent and presumed to coordinate public institutions within the principle of separation of powers and limitations of the law, thus opening the door for a “party member president.”

Turkey has a long parliamentary tradition since 1909. It was accepted by the public that the president should be impartial and independent as in all parliamentary systems. Furthermore, it should be noted that the impartiality of the president is legally guaranteed, especially in countries with a parliamentary system. Thus several constitutions regulate certain “incompatibilities”² to ensure the impartiality of the president. Although it was not legally included in the provisions of incompatibility, for example, in Germany, in principle, the president elect suspends his or her party membership (Heun 2011: 137; Yilmaz 2013: 96–97). These incompatibilities, along with the inevitable difficulties encountered in practice, involve a number of questions:

- Would it be considered normal that the president could chair the National Security Council in the morning and then attend the meetings of his or her party’s management (the Central Executive Committee (MYK) and the Central Decision-Making and Administrative Committee (MKYK)) and supervision branches on the same day?
- In what capacity will the president participate in the opening session of the judicial branch? As the president, who ensures the coordination and collaboration of the legislative, executive and judicial branches, or as the party leader?

- When the party of the president does not constitute the majority in the legislative branch in the concurrent elections and becomes the opposition, will the president be the head of the executive and the opposition leader in the legislature?
- How will conflicts be resolved between the party with the legislative majority and the president who is a member or leader of a political party or who has different political views?
- How will political stability be achieved when concurrent elections will be initiated mutually and frequently as a result of political show-down before the end of the five-year term to overcome the conflict or gridlock?
- The president is represented by the appointed governors in provinces; however, since the president would be also the leader of a political party (the representative of the party leader in the provinces is the provincial chairman), will the governor also fulfill the functions of the provincial chairman?

Turkey abandoned the party member presidency with the 1961 constitution. It was criticized that the current legal arrangement is a backward arrangement that is reminiscent of the single-party period rather than being a reform or raising democratic standards.

However, the circles that support this arrangement argued that it was only the de jure establishment of the de facto situation. The president, who had no obstacle to establish an organic relationship with the Justice and Development Party after the April 16, 2017, referendum, became a member of the party on May 2, 2017. In his speech during the membership ceremony, he said that “I am returning back to my party, of which I am the founder, to my home, my passion, my love today that I had to leave due to the constitution when I was elected president on August 27, 2014.” The Anadolu Agency, which is the official news agency of the state in Turkey, reported that “President Recep Tayyip Erdogan arrived to the JDP, where he was the founder and natural leader, after 979 days, signed the membership declaration and became a party member” (<http://aa.com.tr/tr/gunun-basliklari/cumhurbaskani-erdogan-ak-partiye-uye-oldu/809584>).

On May 21, 2017, in the 3rd Extraordinary Congress of the Justice and Development Party, he was the sole candidate in the elections, and as a result, the president was reelected as the party leader (<http://www.bbc.com/turkce/haberler-turkiye-39982063>). The first reaction by the opposition to the party member presidency, which achieved legal status after

the referendum, was given with the implementation of the “party protocol.” The Republican People’s Party announced that they would refer to the president as “party leader” Tayyip Erdoğan instead of the “President of the Republic of Turkey” because the president lost his impartiality after the amendment (<http://www.hurriyet.com.tr/chpden-erdogana-partili-protokolu-40455239>). In practice, the president started to address the members of parliament again at group meetings, and the debate between party member president Erdoğan and the parties with a parliamentary group still continue with speed. Consequently, it is inevitable that the abovementioned status of the presidential office, which was considered as above political parties in the multiparty tradition since 1950 and bestowed with extensive powers via Article 104 of the constitution, will continue to be the topic of discussion.

The fact that the presidential government system package, as included in the “Executive Proposals” presented to the Conciliation Commission during the 24th parliamentary session, includes presidential decrees and regulations to prescribe implementation to the president, which transfers some legislative powers to the executive, resulted in discussions. In this context, the president has the power to issue presidential decrees on all subjects except basic rights, individual rights and freedoms, political rights and freedoms and issues regulated exclusively by law. The president of the Republic of Turkey will have the power to issue presidential decrees and regulations on topics listed under Economic and Social Rights in the constitution (Right to the Protection of the Family and Children’s Rights, Right to Education and Instruction, Exploitation of the Coasts, Land Ownership, Protection of the Agricultural Workers, Animal Husbandry and Breeding, Expropriation, Privatization, Freedom of Labor and Contract, Rights on Labor Conditions and Recreation, Trade Unions Rights, Collective Labor Agreements and Collective Bargaining Rights, Right to Strike and Lockout, Fair Wages, Health Services and Protection of the Environment, Housing Rights, Youth Protection, Sports Development, Social Security, Preservation of Historical, Cultural and the Natural Assets). It was also stated that when the presidential decree is in contradiction with the law, the law would be valid, and formal and fundamental supervision of the presidential decrees would be conducted by the Constitutional Court. On the other hand, the opposition criticized that these powers are among the duties of the legislative branch, and thus it clearly contradicts the principle of separation of powers when the president is given the powers to govern the country with decrees. In circles that

support the change in the government system, it was stated that in the former parliamentary system, which is no longer in force, the Council of Ministers had the power to issue decrees and statutes. On the other hand, it was mentioned that with the presidential government system in Turkey, the president was given powers to issue decrees that would be invalidated if they conflicted with the law, the office doesn't have the power to issue statutory decrees. Furthermore, it was stated that presidential decrees were modeled after the United States. In an interview, the president of the Constitutional Commission of the Turkish Grand National Assembly, Şentop, pointed out that Obama issued 276 decrees and argued that the presidents of the United States could amend laws by decree. As an example, he mentioned a decree Obama issued on armament, which the US Congress failed to pass (Şentop, *Habertürk Gazetesi*, 30/10/2016). In addition to the United States, decrees are commonly used in Latin American countries. The method of ruling by decrees, or *decretismo*, in Latin American countries,³ was rationalized with the lack of constitutional mechanisms that could resolve gridlock between the legislative and the executive in the presidential system. In practice, the legislative branch is bypassed, and the country is governed with statutory decrees (*decretismo*) (see Sartori 1997: 212–214; Carey and Shugart 1998; Özbudun 2015: 4). However, we consider that it would be healthier to use this method in exceptional cases instead of as a regular practice by prioritizing the democratic applications based on the separation of powers. It would be adequate to resort to this power when there is a conflict between the legislative and the executive branches to resolve gridlock, especially when there would be inconvenient delays and situations that would be difficult or impossible to compensate for and to maintain efficient operations.

Another aspect that should be emphasized regarding the power to issue presidential decrees is the fact that the same arrangement was also present in the 24th legislative session, but the quorum for vetoed bills was amended. As a matter of fact, the quorum required for a legislation vetoed by the president in the 24th legislative session was three-fifths (330 votes, out of 550) of the total votes, but in the new constitutional amendment package, with the provision added to Article 89 of the constitution, an absolute majority is required (301 votes, the new regulation foresees 600 deputies). As is known, according to Article 96 of the constitution, the quorum for the bills in general in the legislature is one-quarter of the total votes (139 votes). According to the same article in the previous constitution the quorum does not change after the veto of the president, and the

bill could be approved with one-quarter of the votes. However, the dramatic change in the quorum, as stipulated in the constitutional amendment package, to the absolute majority (301 votes) gives the president the opportunity to gridlock legislature and rule the country with presidential decrees. And, inevitably, it could lead to the possibility of conflicts when the legislature and the executive have different tendencies.

It could be argued that the requirements of presidential nomination is more democratic with the presidential system of government changes when compared to the conditions depicted in the amendment to the Article 101 of the constitution in 2007. As mentioned in the preamble of the constitutional amendment, it is interesting to note that the aim of the Article 8 or the presidential government system package that amended Article 101 of the constitution was to enhance the impact of political parties (<http://www.tbmm.gov.tr/d26/2/2-1504.pdf>). As is known, with the amendment to the 1982 constitution enacted in 2007, it was stipulated that in addition to 20 deputies, parties that received a total of more than 10% of the valid votes in the last general elections could nominate a presidential candidate; however, the new arrangement lowered this threshold to 5%. Furthermore, it was also stipulated that the presidential candidate could be nominated by at least 100,000 voters to increase political participation.

The package also stipulated that presidential elections and parliamentary elections be held concurrently. The TGNA could decide on the renewal of the elections by the consent of three-fifths (360 votes). In this case, there is no theoretical obstacle that would prevent the president, whose time in office is limited to two terms of 5 years ($5 + 5 = 10$ years), near the end of the second term to make the decision of renewing the elections in the parliament when his or her party has the parliamentary majority, thus extending the presidential term to 15 years.

In Turkey, the presidential system of government package provided a means for the legislature and the presidency to mutually dissolve one another. It is possible to consider this power as a mechanism to prevent a gridlock after a legislative–executive conflict. In this context, Ali Aslan mentioned that powers of mutual dissolution went against the general rationale of the presidential system and the principle of the separation of powers; however, the constitution might include mutual or self-dissolution of the powers under certain circumstances. Subsequently, he proposed that the constitution might include articles that could stipulate which of the powers could back off and how they could back off when conflict leads to a system gridlock (without the renewal of the elections), or conciliatory

mechanisms that would mediate during system gridlocks could be developed or related ad hoc councils could be established in the judiciary branch (Aslan 2015: 35).

Another power granted to the president in the presidential system of government package was the power to declare a state of emergency and extend the duration of the state of emergency. Granting the power to declare a state of emergency for a maximum of six months and to extend the duration of the state of emergency for a maximum of four months is consistent in itself. In the parliamentary system, in the 1982 constitution, this power was granted to the Council of Ministers, hence the executive branch. In the new system, it is natural for the president to use this power because he or she alone is the executive branch. In any case, the legislative branch is still authorized to declare, extend and shorten the duration of the state of emergency and to revoke it. In other words, the executive will be able to use the power under supervision.

The presidential government system package stipulated that the president elect could appoint one or more vice presidents. Vice presidents in the United States, the system considered to be the model in the literature, are elected on the same ticket with the president, hence acquiring legitimacy at the ballot. As a result, for any reason the office of the presidency becomes vacant, the vice president fulfills the presidential duties until the end of the current term. In this context, the vice presidency in Turkey was criticized because it would be decided by the president alone without being subject to any criteria. When considered from the perspective of the relations between appointed and elected offices, it is possible that the appointed vice president, who could use the powers granted to the presidential office over elected members of the judiciary and the legislative branch (executive branch ministers cannot be deputies), could face a crisis of legitimacy. In contrast, the circles who supported the constitutional package stress the difference between the Turkish and American systems, because the Turkish vice president would hold the presidency for only 45 days until snap elections, if the office of the presidency becomes vacant for any reason. Again in worldwide practices, the number of vice presidents, an integral part of the presidential office, is generally limited to a single individual, whereas in Turkey's presidential government system there can be more than one, as stated in Article 106 of the constitution; furthermore, there is no upper limit for the number of vice presidents. In this case, it would be natural to criticize on the assumption that a large number of vice presidents could be appointed in practice.

One of the most controversial issues in the package of the presidential government system before the referendum was the power granted to the president to establish a “public legal entity,” which caused heated debates between the government and the opposition. As a matter of fact, in Article 123 of the 1982 constitution, based on the integrity of the administration, it was stipulated that public legal entities could be established only by law or with the authority explicitly authorized by law. However, with the proposed package, it became possible to establish public legal entities by presidential decree in addition to the law. It was argued that the president of the republic could create local administrative institutions as new public legal entities with the authority granted, and as a result, the president would have the key to the transformation to a federalist structure through regional institutions. It was further suggested that there is threat of division based on the mutual distrust of the government and the opposition. It should be noted that when presidential decree contradicts current law, the law is final. Even when the president uses the power as alleged by the opposition, it will be always possible for the parliament to enact a new law to annul the related presidential decree. Furthermore, when the legislature and the executive have different political tendencies, the president could veto the bill that would annul the presidential decree (then the parliament would need an absolute majority to accept the bill again), and it is necessary to assess this case with the power of the president to establish public legal entities.

Another issue concerning the presidential government system is the power of the president to appoint senior public officials. The procedures and principles of appointment of senior public officials with a presidential decree and the regulation of foundation, duties, powers and responsibilities of central administration public institutions were stipulated to create the officials of the ministries and affiliates in accordance with the newly created executive branch. On the other hand, there were those who criticized this power. For example, Ali Fuat Gökçe stated that the supervision by another government branch of presidential appointments of high officers, judges, army commanders and members of the ministry of foreign affairs is the most important regulatory limitation on the hegemony of the executive in the presidential system. He also stated that the supervision should be conducted by the legislative branch, which is empowered by the people, due to concerns about the impartiality of the high court chair and members who were appointed by the president (Gökçe 2012: 13).

Another arrangement introduced in the package of the presidential government system is the abolishment of the military courts. In paragraph (E) of provisional Article 21 of the package, it was stipulated that the Military Supreme Court, the Supreme Military Administrative Court and other military courts would be abolished when the package is enacted. In Turkey, the military judiciary kept the constitutional status it achieved in the 1961 constitution in the 1982 constitution as well. These courts were considered clearly contradictory to democracy, the rule of law, the judiciary, the right to a fair trial and common judicial principles (Erdem and Coşkun 2009: 87–88). These courts were finally abolished. Thus it could not be expected that the abolishment of military courts would serve to raise democratic standards, and in this sense, both the opposition and the government supported the dissolution of these courts, which emerged as the products of military coups. As a matter of fact, after the coup attempt of July 15, 2016, three parties (JDP, RPP and the Nationalist Movement Party (MHP)) reached a consensus on the abolishment of military courts in the parliamentary constitutional commission (<http://www.milliyet.com.tr/chp-li-tezcan-uc-part-of-military-judicial-political-2298625>). As a result, in the campaign period before the referendum, even those who criticized the government system package supported this amendment. In this context, it is also possible to mention the indirect effects of the abolishment of military jurisdiction referred in Article 145 of the 1982 constitution. In paragraph (D) of the provisional Article 21 in the package, it is stipulated that members of the Constitutional Court who were selected from the Military Supreme Court and the Supreme Military Administrative Court quota shall remain in service until the termination of their membership due to any cause. It was understood that the election of new members of the Constitutional Court under the quota of the Military Supreme Court and the Supreme Military Administrative Court will be terminated. As is known, in addition to examining the conformity of the laws, presidential decrees and the TGNA bylaws with the constitution and its amendments, the Constitutional Court is authorized to act as the Supreme Court. In addition to being a legislative jurisdiction that performs such a key task, the presence of military members of jurisprudence in an institution that could try the leading officers of the legislative, executive and judicial branches is considered guardianship itself. Thus abolishing the selection of members of the military court to serve on the Constitutional Court under the government system package was a significant democratic achievement.

Another issue that was included in the presidential government system constitutional amendment package was the power given to the president to motion a budget act. As a matter of fact, Article 161 of the constitution was amended. The power to motion a budget act belonged to the cabinet because it was the executive organ in the parliamentary system; since the president is the sole executive in the presidential system, this power was endowed to the president with the amendment. The drafting of the budget act by the executive is consistent within itself. However, it should be noted that if the budget act is not enacted within the prescribed period (it should be proposed at least 75 days before the end of the fiscal year in the TGNA, it should be discussed in the Plan and Budgetary Commission and accepted within 55 days, it should then be negotiated in the General Assembly and it should be enacted before the fiscal year is over), a provisional budget act would be initially designated. If the provisional budget is not prepared on time, the previous year's budget is reevaluated and enacted. This could lead to the negligence of legislative powers on the budget and centralization of all budgetary initiatives in the executive branch. As is known, the power of the legislative to approve the budget is one of the most important powers of supervision on the executive. Even the power to approve the budget is significant for the principle of separation of powers. Thus it is possible that the article stipulating that the previous year's budget can be reevaluated and enacted could render the legislative branch dysfunctional in practice. On the other hand, although the circles that supported the proposed change in the government system accepted that the budget is one of the mechanisms of checks and balances between the legislative and executive branches, they argued that this regulation was a highly effective solution for passing a budget act and avoiding gridlock. In this context, based on discussions on how to overcome such gridlock, which could occur between the president and the parliament in existing presidential systems (including the United States), supporters stated that when the president's budget is not approved by the parliament, enactment of a provisionary budget based on the reevaluation of the previous budget would be a way to avoid gridlock (Atar, *Star Gazetesi*, January 21, 2017; Miş and Gülener 2017: 17–18). Ultimately, the executive branch should resort to a provisionary budget and reevaluation mechanisms in the presence of exceptional circumstances and as a last pre-crisis resort.

4.1 OPPORTUNITIES PRESENTED BY THE PRESIDENTIAL GOVERNMENT SYSTEM

In the parliamentary system, the relationship between elected members of the legislative body within the framework of representative democracy and the executive body established by the legislative body, which performs its duties with the vote of confidence of the legislative, is based on the soft separation of powers. In this context, the problems that arise because the ministers are also members of parliament play a role in reducing executive efficiency. Political parties try to distribute state-controlled resources among their supporters to attain their voting support. When individuals can hold both parliamentary and ministerial positions at the same time, concerns about reelection cause them to devote a significant amount of time pursuing the business of their electorates and neglect the long-term policy-making duties of their ministries (Yılmaz 2013b: 630).

On the other hand, the ministers who are appointed by the president are not members of the legislative branch. Because they do not have to answer to their electorate they should be able to devote of all their energies to the field of their respective ministry.

In addition to the legitimacy obtained by the election of the president by the people, it would be appropriate to consider this an achievement for the functionality of the democratic system. As mentioned by Erdoğan (1996: 5–6), for the representative legitimacy of the legislative and executive branches per the principle of separation of powers, the executive organ (the president) and the legislative body are elected by the direct popular vote. The fact that the president is elected by popular vote and has the possibility of being reelected for a second term makes it possible for the legislative to supervise the executive via the ballot, thus holding the president accountable. Today, governments have achieved a framework of a transparency and accountability (Erdağ 2009a: 100). Also, this would introduce participation and increased sensitivity for social needs as a consequence of the term approach (Özmen 2013: 943).

The presidential government system tends to be a zero-sum game, in which, as stated earlier, the winner takes all (Linz 1990: 56). From this perspective, it could be argued that the presidential government system, with the one-person executive, would result in government stability, leading to the political stability. Turkey experienced 12 different coalition governments between 1961 and 1980, and 9 different coalition governments

between 1991 and 2002. In Turkey, before the referendum, a proportional representation system was implemented that was based on the parliamentary system, while election systems were implemented based on the balance between justice in representation and stability in government. In any case, it was obvious that the system was not able to produce a stable structure and, in certain cases, caused government crises. In this framework, if the president, elected by popular vote, and the legislature cannot resort to mutual dissolution, it could be expected that the system would result in government stability, leading to political stability based on the facts that the president is elected for a fixed term and the executive is represented by a single individual.

In Turkey, with the presidential government system, it is possible to argue that the power of the president to appoint officers would render the bureaucracy more functional. As a matter of fact, Fred W. Riggs (1997: 257) argued that when the power of controlling the federal bureaucracy is shared between the legislature and the executive, the president's control over that bureaucracy is weakened, and the president, who has the sole executive powers, cannot be sufficiently effective in administrating the complexities of the modern state. In this context, the power bestowed to the president to directly appoint high-level public officials (ambassadors, governors, etc.) aims to provide an active and functional administration by enabling the direct control of the executive over the bureaucracy. The need for efficient and functional bureaucratic operations is not a modern-day issue but a 1000-year-old problem. As a matter of fact, Nizamü'l-Mülk, who was a significant figure in Turkish state tradition and an important statesman, stated that the quality of the work done is determined not only by the decision makers but also by the practitioners (Özmen 2014: 214), emphasizing the significance of bureaucratic functions.

On the other hand, Erdal Onar (2005: 102) stated that he was not sympathetic to the views that the president should be elected by the people, but that presidential powers should be limited with the powers bestowed in the parliamentary system. In this context, he mentioned that it would not be right for the people to elect a president who had limited and largely ceremonial powers, and in fact there would be no guarantees that such a president would not attempt to use his or her powers to their full extent, even forcing the limits stipulated by the constitution on the basis of being elected by the majority of the population. In fact, since it would also be natural for certain political parties to support and ask their

electorate to vote for the presidential candidate, who could then garner millions of votes, Onar argued that discussions on the impartiality of the president and his or her status over the parties would be futile after this individual takes office.

Emrah Karaca Eren (2002: 140–148), who evaluated the relationship between the presidential system (presidential government system) and the party system as well as the sustainability of the presidential system based on the number of parties, ideological polarization, discipline and institutionalization criteria, argued that

- A two-party system contributed to the functionality of the system more than multiparty structures.
- As political polarization increased, the chance of implementing the presidential system decreased.
- It facilitated legislative–executive relationships when undisciplined parties are present.
- As the degree of institutionalization of the party system increased, the governance ability of the presidential system also increased.

In Turkey, if allowed by the political climate (i.e., a structure in which in-party democracy is more prevalent than in-party discipline with no political polarization) that is expected to evolve into a two-party structure with legislative and executive elections due to the possible change in the electoral system, then it is reasonable to expect that the presidential government system could lead to stability. The adequacy of abovementioned parameters is directly related to the success of the presidential government system and the prevalence of the democracy.

Burhan Kuzu (2012: 16) defended the system against arguments that the multiparty democratic structure existing in Turkey would lose its functions in practice under the presidential government system, which in fact has disadvantages for political and social life, noting “Do not say that the level of democracy is proportional to the number of parties. This is not the right approach today, what do we want today, a conscious government, a strong opposition behind it that would serve as a strong opposition, and very strong civil society organizations.” Thus it was claimed that with the presidential government system there would be an active opposition against the legislative and executive, but most important, there would be civil organizations that are expected to be a determining factor in the

expansion of the political system, and consequently, a democratic society structure would develop.

Hasan Tahsin Fendoğlu (2012: 52), who stated that the transformation into the presidential government system) should be regarded as an opportunity because it is more suitable for Turkish history and national culture with its 2000 years of state experience, argued that there was no danger of tyranny in Turkey, that the country should not be afraid of despotism, and that the current parliamentary system could eventually lead to instability. Thus he argued that based on the public law principle that power and responsibility should be regulated together, the examples of unsuccessful South American experiences were not valid counterarguments. Fendoğlu claimed that the South American national experiences do not match the historical reality in Turkey.

Similar to Fendoğlu, Ergun Özbudun (2015: 4), who stated that the Turkish system could not be criticized based on unsuccessful and dictatorial presidential systems in Latin America, accepted that the presidential system contained certain handicaps. For example, he said it was impossible to deny the presence of reasons such as the lack of mechanisms in the presidential system that could resolve crises between the legislative and the executive, the inflexibility in impeaching an unsuccessful president during his or her term of office and the fact that political struggle could turn into a zero-sum game and lead to polarization. However, he ultimately stressed that the presidential system is a form of democratic government as much as the parliamentary regime or semi-presidential system in its essence. In this context, Özbudun argued that the experience of Latin American presidential systems transforming into dictatorships or being interrupted by military interventions was not caused by the government system alone, but that these countries are coping with economic underdevelopment, huge gaps in income levels, a weak democratic political culture and highly polarized politics, all of which affect the sustainability of democracy.

4.2 OBSTACLES TO THE PRESIDENTIAL GOVERNMENT SYSTEM

The emergence of the presidential system in Turkey occurred in the 24th legislative session, with the “Executive Proposals” text motioned by the Justice and Development Party in late 2011. There are differences between the proposed text presented in 2011 and the presidential government

system package that emerged in late 2016 as a result of the consensus between the JDP and the Nationalist Movement Party.

General critics of the package focus on the same issue, prioritizing the personal consolidation of the powers by the president and the powers bestowed on the executive branch—that is, the president. Bezci (2005: 90), who approached the issue from a different perspective, argued that in fact, the consolidation of the political power in the executive branch was not due to the differences in the political systems, but in the content of the modern theory of state; in both parliamentary and presidential systems, state leaders (prime ministers or presidents) assume power based on their political personalities and abstain from sharing this power. Due to the consolidation of political power at the head of the executive in the presidential system, the sustainability of the democratic system is possible only through the presence of supervisory mechanisms—in other words, the presence of an independent and impartial judiciary and active parliament. Considering the presidential system and the establishment of the judiciary (CJPP, Constitutional Court), it is a matter of debate whether the system would remain within democratic standards based on a party member president and the natural control of the executive over the judiciary. Furthermore, the logical framework of these discussions is based on the assumption that the theoretical authorities and powers bestowed on the executive would be exceeded in practice during times of government change based on typical examples of the three major systems (parliamentary, semi-presidential, presidential) in Turkey (Çınar and Göksel 2012: 2–3).

As a matter of fact, several public opinion polling companies and non-governmental organizations have conducted studies to analyze the citizens' thoughts on the presidential government system. Based on field studies, it was claimed that most of the electorate of all political parties (even the JDP), albeit at varying rates, is concerned that the presidential system would lead to a more authoritarian government (Akyürek et al. 2013: 3). It could be argued that support for the system varied since the emergence of the proposal for a presidential government system in Turkey. Thus support for a presidency could change at any time, and the process is quite dynamic. Therefore, the efforts and activities by political actors could determine whether the existing concerns about the presidential government system could be resolved and whether the public would support the system.

One of the most important criticisms by the opposition related to the constitutional amendment on the presidential government system was the introduction of the consolidation of powers instead of the separation of powers. It was claimed that the existing system in Turkey resembles that of the Latin American countries. It was emphasized that consolidation of legislative and executive powers in Latin American presidential regimes led to dictatorships or to authoritarian regimes (Mainwaring 1990: 11). Instead of forming a causal relationship between the presence of presidential systems in Latin America and the development of dictatorships, it is possible to list neoliberal economic policies, corruption and representation of minority rights as obstacles to the sustenance of the system (Hochstetler 2006: 409). Thus instead of linking a presidential government system in Turkey to a dictatorship, it is necessary to establish institutions and councils that are in harmony with a democratic system to help establish the new government. This is one of the most important tests the presidential government system would experience.

On the other hand, the most important argument favored by the proponents is that the presidential system would improve the level of economic prosperity in Turkey. However, Güvel (1998: 34), who opposed this view, stated that there is no direct relationship between political systems and economic performance. According to Güvel, the success of a political regime in terms of economic consequences depends on the fulfillment of certain other conditions, such as politicians' and citizens' long-term horizons, the institutionalization of fundamental rights and freedoms and the abandonment of centrist-dogmatic governance. However, the fulfillment of these conditions is not possible via a purely political or purely economic approach. It is possible through a politico-economic approach that can be embraced by both the political and the economic systems. The basic parameters of the politico-economic approach are distribution phenomena and the credibility of economic policies. Economic problems could be solved without the need for a regime change as economic policies become credible, and the distribution struggle would not have destructive effects on political mechanisms and the economy. In brief, it would be more appropriate to search for the key to success in other channels instead of expectations that a government change would increase economic growth, improve macroeconomic indicators and even directly increase financial wealth. As a matter of fact, discussions on the system and polarization led to a net capital and hot money outflow in Turkey and visible fluctuations in exchange rates; most important, the real economy felt the

tendency of deterioration in economic trends to its bones. In this context, there are concerns that these debates would deepen the economic crisis in Turkey.

There are also claims that the presidential system is not as successful on economic indicators compared to the parliamentary system. As a matter of fact, Richard McManus and Fatma Gülçin Özkan (2016) demonstrated the correlation between the economic performance and the parliamentary and presidential systems in a study that was conducted on 119 countries between 1950 and 2015. McManus and Özkan argued that presidential systems generally spend less on the public and welfare compared to parliamentary systems, leading to lower budget deficits. Furthermore, they claimed that presidential systems were less successful in political development (corruption index, effective management index, bureaucracy quality index, political stability index), human development (average life expectancy, infant mortality rate, literacy rate) and macroeconomic indicators⁴ (annual growth, inflation, inflation volatility, income inequality). It was also revealed that in countries with weak democratic institutions (rule of law, inclusion of institutions, separation of powers and civil opposition), the detrimental effects of the presidential regimes were even heavier.

Within the context of the obstacles to the presidential government system, it is necessary to mention the mutual power of dissolution based on the legitimacy of representation. Parliamentary elections and presidential elections are expected to be held simultaneously every 5 years, and the president and the Grand National Assembly are bestowed with the power to dissolve each other. In the United States, which is the model presidential system, there is no such power invested in the president or the legislative, but it was included in the constitutional amendment package in Turkey. In fact, this power emerges as a mechanism to overcome potential political gridlock between the president and the legislature elected for a fixed term. However, based on the representational legitimacy of the powers, it is necessary to consider this power only under extraordinary circumstances, not as an ordinary power. The political, economic and social costs of resorting to the power of dissolution with motives such as personal ambitions or the polarization of the political parties should not be forgotten.

Furthermore, it should be remembered that the discussions of government systems are not reserved for Turkey. Not only in new democracies but also in the old democracies, the search for alternative government systems can undertaken. However, there are only a few countries that

could implement such a change. As Przeworski et al. indicated, only three countries were able to implement peaceful changes in government systems between 1950 and 1990 (Gönenç 2005: 3). It was observed that France transitioned from a parliamentary system to a semi-presidential system (1958), and Brazil from a presidential system to a semi-presidential system (1960) and back to a presidential system (1963). Israel and Moldova, which have changed government systems during recent years, could be added to the list. Israel transitioned from a parliamentary system to a unique system in which the prime minister is elected by popular vote (1992), but later, due to the failure of this system, Israel returned to the parliamentary system (2001). In Moldova, interestingly, the transition was from a semi-presidential system to a parliamentary system. Possible obstacles to change in the government system according to Gönenç (2005: 5–11) can be categorized into three groups:

1. Question of legitimacy.
2. Resistance of other actors in the system.
3. Cost of change (legal-technical problems that could arise due to change, problems related to the learning process, foreign reactions, consolidation of the government system change and democracy).

The result of the referendum on the constitutional amendment related to the presidential government system is legal. However, it is obvious that it would be legitimate when it is accepted by the public opinion. The functioning and sustainability of a governmental system, which almost half of the society has not adopted, bear significant questions.

In this context, in addition to the question of legitimacy, political parties represented in the assembly (Republican People's Party, People's Democratic Party), parties not represented in the parliament (Felicity Party, Freedom and Solidarity Party), a number of nongovernmental organizations and a significant portion of the people are resisting the transition to the presidential system. On the other hand, issues such as legal-technical problems due to change, problems due to the learning process, foreign reactions, consolidation of the change in the government system and democracy are listed within the context of the cost of change. The change brings expected new regulations such as reorganization of the executive, personnel act, political parties act, electoral system and secondary legal arrangements, and it is also expected that internalization of these regulations by the society would take some time. In fact, the survival of democracy

under the new system of government is not an issue that can be resolved within a day or two but only through its adoption with its institutions and rules over a long period of time.

Ersin Kalaycıoğlu (2005: 23), on the assumption that the presidential government system will introduce stability based on the elected president, stated that it could be argued that there would be more instability in the parliamentary systems; however, high levels of government instability are due to the sensitivity of the regime for public reactions and its flexible term. He stated that there was no evidence that the cabinet is sensitive to public involvement in presidential systems that produce fixed-term and stable governments (presidential government system) and that this rigidity would contribute to system gridlock by igniting the legislative–executive conflict.

On the other hand, the structure of the presidential government system is a zero-sum game in which the winner takes all. When the fact that the winner takes all is evaluated with respect to the electorate, it indicates predictability in terms of knowing who will be serving in the government. Furthermore, it could be expected that political stability would be introduced by government stability. However, although political pluralism and fair representation could be established in legislative elections in the presidential government system, parties with a smaller electorate would not have a voice in legislative elections. Similarly, changes are expected in the electoral system along with the presidential system. If changes are implemented, it is expected that legislative elections will be held in single-member district or narrowed district systems, which are expected to benefit parties with a relatively larger voter base. Naturally, it might be expected that the smaller political parties might be left out of the legislative branch. A similar situation with the election of the legislative body would be also present in the election of the executive branch, and in general, it would be difficult for parties other than the two main parties—competition between which would be severe—to succeed in the elections. Thus it is expected that, with the presidential government system, the parties that are pushed outside the system along with their political bases would confront each other independent of their political views based on participation in the government or representation channels. And, of course, as political pluralism would be scarred, it should be noted that the sustainability of the system would be difficult.

Another obstacle to the presidential government system is the practice of the separation of powers. It is possible to date the first emphasis on

separation of powers back to Aristotle. In his *Politics*, Aristotle (1990: 132–133) stated that for a good government system, legislative, executive and judiciary should be included as three separate elements and the relationships among these elements should be established adequately. In his historical consequence, Locke, in his *Two Essays on the Government*, considered sovereignty as the supreme legislative power, executive power as that which enforces the laws and federative power as being responsible for security and foreign affairs. It was Montesquieu (Akgül 2010: 82–83) who established the basis of the separation of powers. In this framework, the principle of separation of powers in Turkey was established with the constitutionalist movements, and it has survived up to today with a liberal democracy based on the parliamentary system. In this framework, opposition circles claim concerns about a presidency-dependent judiciary. As is known, the presence of the rule of law and the functional separation of powers are the sine qua nons of the liberal democracy. Thus concerns about a transformation from the separation of powers to the consolidation of powers with the proposed presidential government system are loudly expressed. In fact, according to Boyunsuz, the presidential government system package is far from establishing the mechanism of checks and balances. The proposal, while weakening the legislative and judiciary, significantly strengthens the president. In fact, he claimed that the package has a great similarity to the hyper-presidential system (Boyunsuz 2016: 84). Faced with these allegations, all eyes turned to the concrete steps that would be taken during the process of selection of CJPP members related to the practice of the separation of powers, as detailed at the beginning of the chapter. According to paragraph (C) of the provisional Article 21 in presidential government system package, CPJJ member elections should be held within one month. Thus 7 members were elected on May 18, 2017, with the support of three-fifths of the total number of members (550) in the second round (in other words, by 330 deputies). According to reports, it was observed that the members of the JDP and the MHP voted in an alliance similar to the referendum process. Another 2 members were elected from the MHP quota (Alp Arslan and Hamit Kocabey) and the other 5 members were elected from the Justice and Development Party quota (Yaşar Şimşek, Mehmet Ademoğlu, Cafer Ergen, Ali Cengiz Köseoğlu and Songül Yazar) (<http://www.haberturk.com/gundem/haber/1496115-hskya-uye-seciminde-mhpye-2-kontenjan-1-avukat-1-yargitay-uyesi>) It was also reported that Republican People's Party

and People's Democratic Party deputies did not attend the session in the parliament. On the other hand, President Erdoğan appointed Ankara Deputy Chief Prosecutor Hüseyin Şahin and Istanbul Deputy Chief Prosecutor Mehmet Akif Ekinci as new members of the Council of Judges and Public Prosecutors to replace Mehmet Yilmaz and Halil Koç, whose memberships had expired (*Official Gazette* dated May 20, 2017 and no. 30071). With the inclusion of the minister of justice and the ministry of justice undersecretary, directly appointed by the president as natural members, the appointment of all 13 HSK members was completed. Public debate on the newly appointed HSK started before its inauguration in June 7. Based on the continuation of the debate that began before the April referendum and unacceptance of judiciary practices by certain groups in the society, Republican People's Party Chairman Kemal Kılıçdaroğlu launched a march with the theme of justice that started at Ankara Güvenpark on June 15, 2017, and was to terminate at Maltepe, Istanbul, on July 9, 2017. Discussions between the groups that participated in the march and those that criticized it still continue, focusing on the separation of powers and the state of law.

Another obstacle to the presidential system of government is based on the relationships between the appointed and the elected. According to circles that support a change in the government system, the relationships between the appointed and the elected will be better established with an executive power that includes only one elected official and thus the "bureaucratic guardianship" would weaken (JDP 2015: 28). Opposition circles, on the other hand, approached the same argument from a totally different perspective. Tataroğlu stated that in Turkey the election of political governments with a powerful majority is not very common, not allowing the governments to establish a stable and settled relationship with the bureaucracy; as a result different situations arise where sometimes bureaucrats and sometimes politicians are superior. Furthermore, the reason the elected–appointed relations cannot be established is that bureaucracy has made efforts to penetrate political power at the same time political institutions have been unable to develop a mature and adequate attitude toward this penetration. In this framework, corruption in politics and bureaucracy destroys the public image of administrators and causes the loss of confidence in the state in the institutional sense (Erdağ 2009b: 889). As a result, Tataroğlu (2006: 116–117) argued that it would not be convincing to claim that this situation would be resolved after the transformation to

the presidential system based on the United States, which is the only successful example and has a unique political culture and tradition.

Additional issues are related to the assumption that the presidential government system would improve the operability of the executive and decision-making mechanisms. İltir Turan, who evaluated this assumption, stated that cabinet decisions could take time and could be difficult in parliamentary systems due to the political power of the ministers, which may be independent of the prime minister. And thus the consistency of decisions could remain low. On the other hand, Turan rejects the claim that the decisions could be made rapidly in the presidential system because the president would remove the sources of disharmony and inconsistency. For example, in the American system, each decision comes in a complex package created with an effort to give something to each of the various groups, who tend to disagree with each other as a requirement of the democratic system. And thus the American presidential system is not one in which fast and consistent policies are produced and implemented (Turan 2005: 122).

Sociological assessments of the presidential government system reveal other issues. Erol Tuncer, who noted that the presidential government system is not suitable for the social dynamics and culture in Turkey, stated that the human factor is effective in the success of government and political systems in a culture that includes institutions and traditions that are products of a shared social experience. Finally, ready-to-use systems will not give positive results in every society. Tuncer argued that the presidential system was not successful anywhere but in the United States and that the presidential system would not lead to the desired outcome in Turkey, where the political and cultural infrastructure is not adequate for the system (Tuncer 2012: 7).

Another obstacle to the presidential government system is related to the timing of the introduction of the presidential government system. In fact, several criticisms were voiced about the bad timing and unjustifiable proposal of the presidential system under current circumstances in Turkey. Thus Demir, pointing out that the transition from the parliamentary system to the presidential system was not a priority in Turkey, stated that the main problem was not the government system but the political party and the electoral systems. Demir, basing his argument on the United States and the UK, pointed out the similarities between the US presidential system and the UK parliamentary system in terms of infrastructure and stability and stressed that the political party systems and election systems in

both countries were the same and that both countries implemented a single-member district, single-round simple majority system in which party leaders do not play a role in the nomination of candidates in the elections (Demir 2013: 474).

NOTES

1. With the amendment of the Article 146 of the constitution in the presidential government system package, the number of Constitutional Court members was reduced from 17 to 15. In this context, the election of Constitutional Court members from the Military Court of Appeals, Supreme Military Administrative Court was abolished. Out of 15 members, TGNA would elect 2 members from three candidates for each post nominated by the Court of Accounts Assembly among its chair and members and 1 member from candidates nominated by the heads of the bar associations from free attorneys by secret ballot. In this election to be held in the TGNA, two-thirds of the votes are required in the first round for each vacancy and an absolute majority of the total number of members is required in the second round. If the absolute majority fails in the second round, a third vote is held for the two candidates who received the highest number of votes in the second round; the candidate who receives the most votes in the third round is elected. The president would select 3 members from the three candidates nominated by the Supreme Court of Appeals for each vacant position; 2 members from the two candidates nominated by the Council of State for each vacant position from their relative chairs and members; 2 members from the three candidates nominated for each position by the Higher Education Council from university professors in the fields of law, economics and political science and who are not also a member of the Higher Education Council; and 4 members from top executives, independent lawyers, first-class judges and public prosecutors and Constitutional Court reporters who have been in the office for at least 5 years. In the elections nominating candidates for the Constitutional Court by the General Assembly of the Court of Appeals, the Council of State, the Court of Accounts and the Higher Education Council, the three candidates who receive the highest number of votes are considered as nominated for each vacancy. The three candidates with the highest number of votes from independent lawyers will be considered as nominated by the head of the bar association. To be elected a member of the Constitutional Court, the candidate should be at least 45 years old; faculty members should be professors or assistant professors, attorneys should be active for at least 20 years, top executives should be college graduates and have worked in public service for at least 20 years and first-class judges and public prosecutors should have worked at least for 20 years including the candidacy.

2. The most common inconsistency is the presidency and parliamentary membership. The 1929 Austrian constitution stipulates that the president cannot serve in another office that represents the people (A. 61). The 1937 Irish constitution states that if a member of the parliament is elected president, his party membership shall be void instantly (Article 12/6-2). Similarly, certain constitutions prohibit the president from engaging in any private or public professional or commercial activity that provides income. The Italian constitution states that the presidential mission is incompatible with all other duties absolutely. Also the Greek constitution states that the presidential duties and other duties are incompatible. The 1937 Irish constitution also prohibited the president from undertaking any duties or work that would bring income (Article 12/6-3). Similar provisions exist in the 1964 Israeli and Icelandic constitutions (Gözler 2001: 67-68).
3. It could be observed that presidential systems in Latin America frequently resort to governance by decree, bypassing the parliament, in other words, by decretismo, as Sartori put it. For example in Brazil, after the said powers were bestowed on the president with the 1988 constitutional amendment, the president frequently resorted to this power (Uluşahin 1999: 70).
4. The results demonstrated that in the presidential system, growth rates were 0.6-1.2 points lower on average, inflation rate was 6 points higher, inflation volatility was 4-9 points higher and income inequality was 16%-20% higher than the parliamentary system (see McManus and Özkan 2016).

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Conclusion

Abstract The concluding chapter surveys the parliamentary system and alternative system models for Turkey and examines the presidential system in Turkey in the context of political culture, state tradition and bureaucratic structure. It also demonstrates the theoretical and practical aspects of the presidential system and offers recommendations for the proposal of a presidential system model.

Keywords Presidential government system • Separation of powers • Constitutional Court • Economic development • State bureaucracy

Aristotle was the first to mention the separation of powers, and later on Locke and Montesquieu made theoretical contributions to the concept. Constitutionalist movements that aimed to limit the authority of the absolute monarch also contributed to the formation of the separation of powers. The use of legislative, executive and judicial powers as well as the system of checks and balances among those powers determine the form and essence of the government system.

The governmental systems mentioned in the literature are the presidential system, the semi-presidential system and the parliamentary system. The presidential system is based on a single-person executive elected by the people for a fixed period of time and a rigid separation of powers among the executive, legislative and the judiciary branches. Historically,

the presidential system that emerged in the United States as a reaction to the Westminster system could be found especially in Latin American countries. It is also known that the presidential system experience in Latin America has sometimes led to personal dictatorships. Thus the presidential system is implemented optimally in the United States.

In this context, besides the process of impeachment, the president is elected for a fixed term in the United States and cannot be dismissed by the legislative body. It could be stated that the jurisdiction branch in the system has independent operations from the president or the Senate or House of Representatives majority. Knowing who would use the executive powers when elected due to the nature of the system means predictability for the electorate. The system is in the form of a game in which the winner takes all. The fact that the winner takes all results in government stability, while the significant masses, who could be considered losers, are left out of the system. In this case, observation of social fracture depends on the loose party phenomenon and the absence of political polarization. Thus one of the reasons for the healthy operation of the system in the United States is the strength of the political infrastructure.

On the other hand, there is also the possibility of political gridlock in the presidential system when the legislature and the executive elected for a fixed term have different political tendencies. However, the system finds its way out through the presence of the culture of compromise and the lack of polarization. In this context, several elements are required in the infrastructure for the survival of the system. Significant elements include a democratic culture, electoral system, political party system, independent judicial system and operations, supervision of the public on the executive and secondary legal regulations that facilitate the operation of the system.

The second government system is the semi-presidential system, which is a hybrid between the presidential and the parliamentary systems. The system is generally a bilateral pendulum. On one side of the system is the president elected by the people for a fixed term, while on the other is the prime minister working with the confidence of the legislative branch. In fact, it has been commented that with the constitutional amendment enacted in 2007, the election of the president for a fixed term and the presence of the minister working with the confidence of the legislative branch resulted in a semi-presidential system in Turkey.

In the semi-presidential system, if the legislative branch and the president have different political tendencies, the search for co-habitation and

political compromise is inevitable. In short, it could be expected that the semi-presidential system would produce either a political crisis or political stability based on the adequacy of the democratic culture and political atmosphere for reconciliation.

The third government system is the parliamentary system. In the parliamentary system, soft separation of powers prevails. The soft separation of powers means that the legislative is elected by the people within the context of representative democracy and the executive that emerges from the legislative and operates with the confidence of the legislative branch. It is possible to find examples of parliamentary systems in almost every continent, especially among European Union countries, as well as in the UK (Westminster system). The essence of the parliamentary system is governments with a flexible term in practice. Another feature of the parliamentary system is its collective nature of the executive branch and limited powers of the president. It could be argued that the system is adequate for a pluralistic and participatory democracy. On the other hand, it could be argued that the system leads to fragmented political governments and government instability due to the inherent multiparty structure. However, it could also be argued that instruments such as the removal of the executive with a vote of nonconfidence and the power of the executive to dissolve the legislature would renew legitimacy through popular vote and help avoid a government crisis. The potential of these powers themselves to create a political crisis following a government crisis is obvious. Thus it is also necessary to acknowledge that government stability would not lead to political stability under all conditions. In fact, empirical studies conducted on national case studies do not affirm the claim that the parliamentary system results in coup d'états and interruptions in democratic life due to this inherent structure.

When the parliamentary system is mentioned, it is necessary to emphasize that the parliamentary system implemented in Turkey before April 16, 2017, was rather different from the classical parliamentary system. In this framework, it needs to be noted that the 1982 constitution included a presidency that was empowered with a wide authority replacing the system that prioritized a powerful executive and a president with limited powers. In the same context, the constitutional amendment that prescribed the direct election of the president by popular vote distanced Turkey further from the classical parliamentary system. However, despite the negative credentials due to the abovementioned legal developments and interruptions in democracy with military coups, the democratic system in Turkey

has a history of about 150 years. Within this tradition, significant developments have been achieved in democratic institutions and rules, a functional separation of powers, a state of law and an independent judiciary. Rationalized parliamentarism has been discussed to reform the problematic aspects of the parliamentary system within the framework of the search for an alternative to the parliamentary system.

Rationalized parliamentarism is a system that aims to establish legal means of overcoming government crises inherent in the parliamentary system, to ensure government stability and thus, political stability as a result. The rationalized parliamentarism instruments are based mainly on the assumption that government stability is the duty of the opposition as well as the government. To ensure the rational behavior of members of the parliament, a period of cooling is required, which is implemented in critical sessions and especially when opposition motions of censure and votes of confidence for the government are proposed, and should be regulated to facilitate government stability in the legislative branch. As a motion, rationalized parliamentarism was proposed by the Republican People's Party as a solution to the existing problems in the parliamentary system in their platform for the general elections of June 7 and November 1, 2015. However, the extent to which rationalized parliamentarism would serve as an instrument of political stability in an attempt to fit political space into the legal framework with legal instruments in the parliament is a topic of debate. To find a resolution for the proposal, it is necessary for the political parties, which would assume the mission of operating the system in the parliament, to internalize the democratic system and the rule of law.

The presidential system that was proposed within the context of the search for alternative government systems instead of conducting reforms within the parliamentary system still occupies the agenda both in a historical perspective and on a daily basis. It would be more appropriate to date the debate on the presidential system in Turkey to the post-1980 period because, within the context of the search for alternative models for the parliamentary system model formed by the 1982 constitution, that is when Turgut Özal voiced the transition to a presidential system from the top for the first time. The primary motive behind this proposal was the fact that Turgut Özal, who was elected president in 1989 with the majority of the Motherland Party after he became the prime minister in the single-party governments that were formed after the elections of 1983 and 1987, wanted to keep his grip on the Motherland Party, which he founded. After Özal, Süleyman Demirel, who was elected to the presidency in 1993, left

the chairmanship of the True Path Party due to constitutional requirements; however, Demirel became a proponent of the presidential system with the same motives as Özal. Demirel's convictions were limited to press releases due to the strong military guardianship of Turkish politics during that time.

However, a few leading actors, especially Tayyip Erdoğan, in the Justice and Development Party that became the government on November 3, 2002, conducted a limited propaganda campaign for the presidential system, which was not included in either the party program or the November 3, 2002, election declaration. This rhetoric, which remained at the level of discourse, materialized in the text titled "Executive Proposals" and was presented to the Reconciliation Commission established after the 2011 general elections. However, the commission requires the consensus of the four political party groups represented in the parliament (Justice and Development Party, Republican People's Party, Nationalist Movement Party, Peace and Democracy Party), and hence the motion did not pass the commission stage.

The presidency system, which did not enter the TGNA agenda, but was discussed intensely by the public after it was introduced to the Reconciliation Commission (formed to work on the JDP's civilian constitution, the "Executive Proposal") was assessed by Prime Minister Tayyip Erdoğan as "Turkish type."

The proposal of the presidential system presented to the Reconciliation Commission included the general characteristics of the system of checks and balances and rigid separation of powers; however, it also contained certain proposals that are outside the general framework specific to Turkey.

In the presidential system proposal presented to the Reconciliation Commission, the power to issue presidential decrees and secondary regulations (bylaws) was given to the president outside the general framework. Furthermore, the fact that the requirement to enact a law that was vetoed by the president with a three-fifths majority (330 deputies) could result in a gridlock that would be initiated by the president if he or she wanted to. Thus it may also cause political crises in the event that the executive and legislative branches have different political tendencies; in addition, the executive could control the legislative, which contradicts the principle of separation of powers.

In the proposal of the presidential system presented to the Reconciliation Commission, the powers of the president and the legislative body to dissolve each other was also publicly discussed. The power of

mutual dissolution was designed to overcome a possible system crisis if the president, who was elected for a strict fixed term, and the majority of the legislature are of different political tendencies. Furthermore, the power of mutual dissolution also has the risk of turning into a political settlement among the powers based on the political conjuncture. It may be argued that in general, the presidential system leads to government stability, but to ensure political stability, it needs instruments to sustain the system in case of possible crises and conflicts. As a result, it is necessary to resort to the power of mutual dissolution in exceptional cases, such as a political gridlock, instead of using the power for personal political interests for the sustenance of the democratic system.

However, it is necessary to consider the power of mutual dissolution along with the legislative powers of the president that could force the legislature to enact laws with an absolute majority owing to the presidential veto power, included in the proposal presented to the Reconciliation Commission. The powers to dissolve the legislative and renew the elections that would be added to the disproportionate powers the president would obtain over the legislative branch, as mentioned earlier, are observed in only a few Latin American countries without a good democratic record. Thus it was commonly believed that the “Executive Proposals” presented to the Reconciliation Commission in 2011 would lead to the consolidation of powers instead of the separation of powers within the context of appointments to high judicial organs, the power to issue presidential decrees and the power of mutual dissolution. Eventually, the proposal, which was severely opposed by three political parties represented in the 24th session of the parliament (Republican People’s Party, the Nationalist Movement Party and the Peace and Democracy Party), could not be sent to the parliament since it needed consensus in the Reconciliation Commission, where these three parties were represented by an equal number of members.

In the June 7, 2015, and November 1, 2015, general elections, the Justice and Development Party included the presidential system proposal in their election declaration. In contrast, the other three political parties maintained their opposition to the presidential system in favor of the parliamentary system in their respective election manifestos. In the general elections, the Justice and Development Party failed to obtain sufficient number of deputies to amend the constitution. However, on July 15, 2016, the military attempted a coup against the democracy and the elected government; it failed because of the united stance of the political parties

and the support of the people, including on the night of the coup. Consequently, surprising political support for the Justice and Development Party came from Nationalist Movement Party Chairman Devlet Bahçeli. In fact, on October 11, 2016, the first sign of the package known as the presidential government system by Devlet Bahçeli was presented at the Parliamentary Group Meeting. As a result of negotiations between the Justice and Development Party and the Nationalist Movement Party, the proposal was sent to the Turkish Grand National Assembly's Constitutional Commission on December 12, 2016, and commission negotiations started on December 20, 2016. The motion, which was presented as 21 articles to the commission, was reduced to 18 articles after nine days of negotiations in the commission, and was accepted on December 30, 2016. Negotiations in the parliamentary General Assembly began on January 9, 2017. The second round of negotiations was completed on January 21, 2017. On February 11, 2017, the amendments were published in the *Official Gazette*, and the referendum date was set by the Supreme Board of Elections as April 16, 2017. The presidential government system package was enacted in the referendum. And the final results of the referendum were announced with the Supreme Election Board decision dated April 27, 2017, and no. 2017/663 (*Duplicate Official Gazette* dated April 27, 2017, and no. 30050).¹

In the presidential government system package, which was the subject of referendum, there were a number of powers that were the same as in "Executive Proposal" presented to the Reconciliation Commission in 2011. In fact, the mutual dissolution power was included in the presidential government system package. In this context, it was stipulated in the presidential government system that a three-fifths majority (in other words, a vote of 360 deputies) is required in the legislature to renew the elections. In this case, there is no theoretical obstacle that would prevent the president, whose time in office is limited to two terms of 5 years ($5 + 5 = 10$ years), near the end of the second term to make the decision of renewing the elections in the parliament when his or her party has the parliamentary majority, just before the end of the second term of the president, and to renew the elections and to extend the presidential term to 15 years. On the other hand, mutual dissolution power was considered to be an exit mechanism in cases of political crisis and gridlock. In the literature, as mentioned in the text as well, it was emphasized that in case of system gridlock, articles could be included in the constitution prescribing which of the conflicting powers would step back and to what extent;

mediating mechanisms that would be activated during a system gridlock could be determined and related ad hoc councils could be established in the judiciary before the point at which renewal of the elections is reached. Furthermore, it would be appropriate to use these powers under exceptional circumstances because the solution of each political crisis between the legislature and the executive with nondemocratic standards could possibly endanger the democracy.

Another point that should be emphasized in the discussions on term in office is the fact that simultaneous elections of the president and the legislative branch would be conducted on November 3, 2019, unless the legislature decides otherwise, as stipulated by a provisional article. In this context, the 12th president of the Republic of Turkey, Recep Tayyip Erdoğan, was elected president on August 10, 2014, for a term of five years, expiring on August 10, 2019. On the other hand, the only solution for the president not to exceed his term in office during the three months between the date of the termination of his term in office and the simultaneous legislative and executive elections on November 3, 2019, would be a resolution by the legislature to hold the elections on a date adequate for the end of his term in the office. The legislature needs a three-fifths (360) majority to decide on the date of elections. In this case the Justice and Development Party would need external support, given the distribution of seats in the 26th term of the parliament. However, although the provisional article stipulates that the elections are to be held on November 3, 2019, it was also stipulated in a provisional article in the presidential government system package that Article 67 of the constitution—“the amendments to the electoral act will not be enforced in the elections that would be held within a year of the enactment of these amendments”—would not apply to the first presidential and legislative elections. Thus it could be stated that the general election and the presidential election will be held together within one year after the referendum that was held on April 16, 2017, but it is also possible that the election decision will be made based on the results of the referendum. In fact, since yes votes were the majority by only a slight margin in the April referendum, the Justice and Development Party spokespersons began to mention that the elections would be held in 2019 simultaneously.

The presidential government system package includes the power to issue presidential decrees, which was part of the “Executive Proposals.” In the presidential government system package, the president is given the authority to issue a presidential decree in matters that are needed when

general policy is carried out. In the context of this authority, the president is empowered to issue decrees in matters he or she deems required to conduct general politics. The president is empowered to issue decrees in matters not regulated by law with the exceptions of fundamental rights, human rights and freedoms and political rights and freedoms. Also, there is no obstacle to the presidential decree regarding economic and social rights, which are broadly mentioned in the constitution. Within this scope, the president would have the freedom to issue decrees on a wide range of issues such as the workweek, content of social security rights, family unity and compulsory education.

However, it should be noted that the presidential decree was assigned a lower level when compared to the laws within the hierarchy of norms. In this context, if the presidential decree and the provisions of the law on the same subject contradict, it was envisaged that the provisions of the law will be implemented and the compliance of presidential decrees with the existing law will be regulated by the Constitutional Court. However, it should be emphasized here that when the majority in the legislature shares the same political beliefs as the executive, the legislative branch would not likely motion against a presidential decree, and the legislature would be rendered dysfunctional, controlled in effect by the executive, which is against the separation of powers. On the other hand, in cases in which the executive and the majority of the legislative branch have different tendencies and the legislative enacts laws as an alternative to presidential decrees, no authority that would decide which would be valid was specified. In that case, it would be adequate to exercise the power of the presidential decree (decretismo) sparingly. The use of the presidential decree should be limited to administrative regulations.

There are new regulations in the presidential government system package that were not included in the text proposed in 2011. Among these differences, the presidential government system package included the “party member president” amendment. The last paragraph of Article 101 of the 1982 constitution that stated “president elect should resign from the party if she or he is a member and the president’s membership in the Grand National Assembly of Turkey is terminated upon election” was removed from the constitution. Thus there is no legal obstacle for the president to formally become a party member and to participate in the decision-making mechanisms of the party. Based on the fact that the office of the presidency is required to coordinate the legislative, executive and judiciary branches, a party member presidency has the potential to harm

the principle of separation of powers. On the other hand, the constitution of several countries include legal discrepancies to ensure the impartiality of the president. In fact, there are also countries that have made it a principle to suspend the party membership of the president elect to ensure neutrality. It was considered that the party member president regulation aimed to make the de facto situation de jure in Turkey. Thus there is a correlation between the degree of the affiliation of the president with his or her political party and the operation of the separation of powers and democratic standards. The statement of the president of the Republic of Turkey on May 2, 2017, during a ceremony to become a member of the Justice and Development Party was interesting: “I am coming back to my party, of which I was a founder, to my home, my passion, my love today.” When the president’s appointments to the CJPP, his dominance over the Justice and Development Party and efforts to change the parliament bylaws are considered, the debate on the separation of powers will be sure to continue.

One of the topics not included in the 2011 “Executive Proposals” but mentioned in the presidential government system motion was the checks on the executive by the legislative branch. The 1982 constitution included checks such as parliamentary questions, general discussion, censure, parliamentary investigation and parliamentary inquiry as supervisory instruments consistent with the parliamentary system. In the presidential system, only written questions, general meetings and parliamentary inquiries were included. In other words, there is no mention of censure, which is found in the genetics of the parliamentary system but also found in certain presidential systems. In particular, especially in the parliamentary system, it is possible to send the executive branch member ministers to the Supreme Court after initiating a parliamentary inquiry with the signatures of one-tenth of the members of the parliament (55 representatives) and with the absolute majority (276) vote in the assembly, whereas in the presidential system, an absolute majority is needed (301) for the motion against a minister, three-fifths of the General Assembly (360 members of the parliament) are needed for a commission inquiry, and two-thirds (400) are required to send the minister to the Supreme Court. On the other hand, it was stated that it became easier to initiate a parliamentary inquiry against the president and to bring the president to the Supreme Court numerically. Also, because 12 of the 15 members of the Constitutional Court would be appointed by the president directly or indirectly, it was debated whether the Supreme Court would be dysfunctional under the circumstances.

On the other hand, after the April 16, 2017, referendum, it was stated in the Assembly Bylaws No. 2/1783 proposal dated July 7, 2017, that interpellations and parliamentary inquiry motions should not be read in the General Assembly, instead only the motion and its abstract should be submitted to the deputies and the government. With the proposed amendment, it could be argued that the use of the two supervisory mechanisms (interpellation and parliamentary inquiry) by the legislative branch could become dysfunctional. Thus it could be stated that the supervision of the legislative branch on the executive would, in practice, be limited with the introduction of the presidential government system package. On the other hand, it should not be forgotten that facilitating and functionalizing the executive's control by the legislature and the judiciary would be one of the most important achievements for democracy.

With the presidential government system, the president will alone be able to create public legal entities, will be able to issue decrees that would restructure the administration and will have the authority to appoint senior public officials (governor, ambassador). In this context, it was claimed that transferring the administration of some duties that had been conducted in collaboration by the legislative and executive branches to a single individual would make it possible to find rapid and active solutions to the complex businesses of the modern state. On the other hand, critics argued that singular power of appointment could cause the hegemony of the executive power. However, in Turkey, the power to appoint senior public officials within the parliamentary system was exercised by the executive branch through the tripartite decree procedure. In that case, there is no practical disadvantage for the president to use this executive power alone in the presidential government system.

Also in this context, the power to incorporate public legal entities granted only to the legislative branch in Article 123 of the constitution, is transferred to the president. There is a possibility for the legislative branch to abolish the public legal entities incorporated with a presidential decree. If the legislature and the executive have signed conflicting decisions regarding a public legal entity, it would cause irreparable difficulties, and hence the executive should resort to this power in only extraordinary cases (war, earthquake, etc.) in which legislation could be delayed.

Another debate is on the relationship between government systems and economic development. As a matter of fact, it was claimed that the economic growth trend in Turkey would increase with the presidential system. Thus to evaluate the presidential, semi-presidential and parliamentary

systems based on economic performance, research was conducted on 119 countries, examining data from a period of 65 years, between 1950 and 2015, and it was claimed that the parliamentary system was more successful than the presidential system. It is true that rapid operations in legal infrastructure, bureaucratic structure and decision-making mechanisms are important for the achievement of economic development. Empirical studies, however, demonstrated that there was no direct relationship between the governmental system and economic development.

The presidential system is a zero-sum game in which the winner of the election, hence the one-man executive (plus vice presidents and ministers appointed by the president) takes all. There is a strong party discipline in Turkey. As a result of the pluralist democracy, there are several parties in the parliamentary system. In this framework, it is possible to observe single-party governments or coalition governments in the executive branch, representing their social bases. However, in the presidential system of government there is a possibility that parties and social bases that do not agree with the political view that holds the executive power would be out of the system. On the other hand, there is a high level of political polarization between the social bases as a result of the party discipline phenomenon. Hence with the presidential system, party discipline, political polarization and the resulting fractures and conflicts between the political party bases would present a danger against the sustainability of the system. For those who are excluded from the representative mechanisms (due to the single-person executive who would be elected for a fixed term) to adopt the system, all political parties and their bases should internalize democracy. It is essential that the government and the opposition should soften the language of politics to minimize the polarization and ensure the sustainability of the system.

The presidential government system, as described in Article 106 of the constitution, includes a provision for an unlimited number of vice presidents, who are not elected but appointed. If the president of the republic is sick or temporarily unavailable or the president is dismissed for any reason, the vice president would act as a deputy with full official powers until elections are held within 45 days. However, the fact that the vice president would not be elected but appointed by the president in the Turkish system, contrary to the general practices worldwide, caused serious debates. In fact, the presidency functions as a coordination authority based on the separation of powers. It is possible for the appointed vice president to use all the powers endowed to the president by the constitution for 45 days,

with power over the elected judiciary branch members, legislative members and elected executive branch members (ministers who become executive branch members are stripped of their legislative membership), causing a legitimacy crisis. It is not possible to agree with the claim that the election of vice presidents on the same ticket with the president, similar to other worldwide examples, would create double legitimacy in Turkey. There is no national case where the double legitimacy of the president and the vice president, whose job descriptions and duties and powers are defined separately, caused a crisis in the world. Thus the constitution should be amended to fix the number of vice presidents and to state that the said vice presidents should be elected by popular vote.

Another issue that was changed with the presidential government system constitutional amendment package was the presidential power of motioning the budget due to the transfer of executive powers from the cabinet to the president of the Republic of Turkey. Proposing the budget act by the president and the stages for enactment outlined by the Planning and Budget Commission and General Assembly are similar to the implementation in the parliamentary system. However, the difference lies in the fact that when the budget act cannot be enacted in the legislature, it was stipulated that a provisional budget would be motioned, and if that also fails, the previous year's budget will be reevaluated and enacted. It is obvious that the regulation was included to prevent the crises that were experienced in the United States, which is the model for the presidential system, between the legislative and the executive branches. It should be noted here that the budget is one of the most important supervisory mechanisms by the legislative on the executive as a requirement of the separation of powers. In this context, it is very important that the executive does not abstain from the supervision of the legislative on the budget and that the proposal should be open to negotiation at the commission and the General Assembly levels. The existence of the provisional budget and reevaluation processes stated in the constitution requires that the executive does not transform the budget act motion into a means of imposing sanctions on the legislature. Similarly, the legislative branch facilitates the budget as a necessity for democracy and should not translate this instrument of supervision into a means of political reckoning. It is of essence that the budget act be resolved with negotiation and consensus between the legislative and the executive branches, without resorting to a provisional budget or reevaluation mechanisms. Thus the budget act procedure is a reflection of the democratic culture that exists in the country.

The representative legitimacy of the presidential system has been questioned based on the fact that the legislative and executive elections are to be held every five years. Considering the simultaneous legislative and executive elections, the mutual dissolution powers, the organic relationships between the presidential and other candidates and their parties and even the possibility of the president simultaneously leading his or her party, it could be argued that the election campaign would be led by the presidential candidate. This situation could lead to the stability of the system because the executive and the legislative branches would likely to have similar compositions, but it could also lead to the full control of the legislature by the president. However, it is possible to observe the opposite in world practice. Thus it is proposed that the legislative branch should be elected for two years initially, and in the second term, half of its members should be renewed every three years to complete the remaining term to renew the legitimacy of the system and executive-controlled legislature, since executive elections should be for a fixed term.

The presidential government system naturally restructures the relations between legislative, executive and judiciary branches. In fact, the first emphasis on separation of powers began with Aristotle and Locke and Montesquieu contributed to the development of the concept. In Turkey, the almost 150-year-long parliamentary system was based on the soft separation of the powers. However, in the presidential government system, the president would have legislative powers via presidential decrees and executive powers in addition to appointing judges to judiciary organs. In fact, it was stipulated that 12 out of 15 members of the Constitutional Court would be directly or indirectly appointed by the president, as outlined in Chaps. 1 and 4. Because, based on the role of CJPP in the election of the members of the Council of State and the Supreme Court of Appeals and the composition of the 5 members of the Constitutional Court elected by the Council of State and the Supreme Court of Appeals, debate on whether the judiciary is under the control of executive are under way. In this context, the potential harm to the presidency is obvious since everyone needs the law and because the judiciary with a potential for politicization is likely to cause the system to be questioned by the public. Thus it is vital that the president prioritize merit and conduct the appointments without paying attention to political relations. However, despite all the parameters that need attention, it was noted that the support provided by the Nationalist Movement Party during the referendum in the Constitutional Commission and the General Assembly continued during the election of CJPP members

after April 16, 2017, whereas the other two parties (Republican People's Party and Peace and Democracy Party) refrained from the vote and criticized the government for nominating candidates with political relations. On the other hand, there were claims that the four appointments made by the president were individuals who supported the executive. As a result, it was alleged that the assumption that the presidential government system would provide independent and impartial judiciary was not substantiated.

Another arrangement introduced in the April 16, 2017, presidential government system package with a provisional article was the abolishment of the military courts. In Turkey, the military courts (Military Court of Appeals and the Supreme Military Administrative Court) were initially established with the 1961 constitution and remained as institutions in the 1982 constitution. Despite the fact that the abolishment of military courts remained in the agenda and were discussed from time to time in the multiparty system, Turkey has a strong tradition of military guardianship. It was only after July 15, 2016, that a constitutional amendment commission was established with three members (JDP, RPP, NMP), and the consensus in the commission resulted in the abolishment of the military courts in the April 16, 2017, referendum. The amendment is a reform that prioritized the right to a fair trial and unification of the judiciary and can be considered an important democratic achievement in Turkey. Accordingly, it is possible to consider the termination of the election of members of the Constitutional Court from Military Courts as demilitarization, strengthening the independence of the judiciary and the rule of law and the removal of an element of military guardianship.

The presidential government system introduced a central administration, consistent with the Turkish state tradition and was suitable for the country's social structure, thus instead of being a feared system change, it should be considered an opportunity. Others proposed "rationalized parliamentarism" to transform the parliamentary system that was already in place to a more democratic and functional structure instead of making a complete change in Turkey's government system. Finally, others thought the solution was to change the political parties act and the electoral code instead of seeking a government system change.

Based on these discussions, we consider the key to the functionality of the presidential government system is paying attention to the criticisms and rendering the system more applicable. Also, in this context, it is essential for the sustainability of the system that the proposal of the change in

the government be perceived as above party divisions, without being a topic in daily politics, and a consensus should be established between the parties represented in the parliament via the package.

NOTES

1. According to the decision, it was determined that in the country, including domestic and foreign voter registries, 49,798,855 out of 58,291,898 registered voters voted in the referendum; accordingly, voter turnout was 85.43%, 48,936,604 votes were valid, 862,251 votes were invalid, 25,157,463 voters voted yes, 23,779,141 voters voted no, the rate of yes votes in valid votes was 51.41%, and the rate of no votes in valid votes was 48.59% (Constitutional Amendment Referendum Official Report).

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INDEX¹

A

Adalet ve Kalkınma Partisi (AKP), 41n3
American party system model, 17
Anadolu Agency, 49
Anglo-Saxon judicial system, 2
Animal Husbandry and Breeding,
 Expropriation, Privatization, 50
Appointed and elected presidential
 system, relationships between, 67
Argentina, 45
 presidential system, 2
Aristotle, 9, 66, 75, 88
Arslan, Alp, 66
Article 101 (Turkish Constitution), 6
Aslan, Ali, 52
Assembly Bylaws, Article 102, 47
Assembly Rules of Procedure, 47
ATAMER, *see* Atatürk Principles and
 Revolutionary History Research
 and Application Center
Atar, Yavuz, 22
Atatürk period, 32

Atatürk Principles and Revolutionary
 History Research and Application
 Center (ATAMER), 33
Authority, 2, 6, 8, 9, 14–16, 20, 34,
 38, 39, 54, 61, 75, 77, 82, 83,
 85, 86

B

Bahçeli, Devlet, 5, 34, 36, 43, 81
Başkent University, 33
Bayar period, 32
Bezci, Bünyamin, 61
Boyunsuz, Şule Özsoy, 66
Brazil, 45, 70n3
 presidential system, 2, 64
Bureaucratic oligarchy, 34

C

Can, Osman, 25
Çelebi, Fatih, 25

¹Note: Page numbers followed by “n” refer to notes

- Chile, 46
 presidential system, 2
 Çiçek, Cemil, 33
 CJPP, *see* Council of Judges and Public Prosecutors
 Co-administration, 2
 Co-habitation, 2, 14, 15
 Collective Bargaining Rights, 50
 Collective intelligence, 34
 Collective Labor Agreements, 50
 Colombia, presidential system, 2
 Conciliation Commission, 50
 Constitutional amendment, 15, 22, 35, 36, 43, 46, 51, 52, 56, 62–64
 Constitutional Amendment Referendum Official Report, 90n1
 Constitutional Commission (Turkish Grand National Assembly), 10, 51, 81, 88
 Constitutional Court, 5–7, 9–12, 37, 39, 44, 45, 47, 50, 55, 61, 69n1, 83, 84, 88, 89
 Constitution and Justice Commissions, 44
 Council of Judges and Public Prosecutors (CJPP), 44, 45, 61, 66, 84, 88
 Council of Ministers, 21, 24, 51, 53
 Council of State, 10, 11, 39, 44, 45, 69n1, 88
 Court of Accounts Assembly, 69n1
 Court of Appeals, 10–12, 44, 45, 69n1, 88, 89
 General Assembly, 69n1
- D**
 Demilitarization, 89
 Demir, F., 68
 Demirel, Süleyman, 4, 33, 40–41n2, 78, 79
 Democracy, 77, 80, 82, 85–87
 liberal, 66
 pluralist, 86
 Dual executive branch, 19, 21, 23
 Duverger, Maurice, 14, 16
- E**
 Economic and Social Rights, 50
 Economic development and governance systems, relationship between, 85–86
 Ekinci, Mehmet Akif, 67
 Elgie, Robert, 15
 England, *see* United Kingdom
 Erdoğan, Tayyip, 11, 33–35, 49, 50, 57, 67, 79, 82
 Eren, Emrah Karaca, 59
 EU, *see* European Union
 European Union (EU), 3, 18, 77
 Executive powers, 6, 8, 9, 16, 18, 21, 31, 35, 37, 38, 58, 62, 66, 67
 Executive Proposals, 4–7, 35, 36, 43, 44, 50, 60, 79–82, 84
 Exploitation of the Coasts, 50
- F**
 Fair Wages, 50
 Felicity Party, 64
 Fendoğlu, Hasan Tahsin, 60
 France
 rationalized parliamentarism, 24
 semi-presidential system, 2, 14, 15
 Freedom and Solidarity Party, 64
 Freedom of Labor and Contract, 50
 French constitution of 1958, 23
 Article 49, 25n2, 26n4
- G**
 General Assembly, 43, 47, 48, 87, 88
 George I, 18
 German constitution of 1949, 23
 Gökçe, Ali Fuat, 54

Gönenç, L., 64
 Government systems, 13–26
 defined, 13
 Gözler, K., 38
 Grand National Assembly, 5
 See also Turkish Grand National
 Assembly
 Greek constitution of 1975, 25n2
 Güvel, Enver Alper, 62

H
 Hakimler ve Savcılar Yüksek Kurulu
 (HSYK), 5, 39
 Health Services and Protection of the
 Environment, 50
 High Council, 47
 Higher Education Council, 69n1
 Housing Rights, 50

I
 İba, Şeref, 22
 İçener, Z. Ç., 33
 Ideological polarization, 17
 Impeachment, 2, 16, 39, 76
 Incompatibilities, 48
 Incompatibility rule, 17
 İnönü period, 32
 Interpellation, 47, 85
 Irish constitution of 1937, 70n2
 Israel, presidential system, 64

J
 JDP, *see* Justice and Development
 Party
 Justice and Development Party (JDP),
 4, 5, 11, 12, 21, 33–36, 41n3,
 43, 47, 49, 55, 60, 61, 66, 67,
 79–82, 84, 89
 3rd Extraordinary Congress of, 49
 presidential system, 36–40

Justice Commission (Turkish Grand
 National Assembly), 10

K

Kahraman, Mehmet, 15
 Kalaycıoğlu, Ersin, 16, 65
 Kılıçdaroğlu, Kemal, 67
 Kılınç, Zeynel Abidin, 20
 Koç, Halil, 67
 Kocabey, Hamit, 66
 Koker, Levent, 46
 Kuzu, Burhan, 33, 59

L

Land Ownership, 50
 Latin America, 80
 presidential system, 2, 60, 62, 70n3,
 76
 Legitimacy, 7, 8, 17, 39, 40, 45, 53,
 57, 63, 64, 77, 87, 88
 Liberal democracy, 66
 Lijphart, Arend, 19, 25n1
 Linz, Juan J., 20
 Locke, John, 9, 18, 66, 75, 88

M

McManus, Richard, 63
 Mainwaring, Scott, 17
 Menderes period, 32
 Mexico, 45, 46
 presidential election, 46
 presidential system, 2
 Military Courts, 89
 abolishment of the military courts, 55
 Military Court of Appeals, 12, 69n1,
 89
 Military junta regimes, 3
 Ministry of Justice, 10
 Moldova, presidential system, 64
 Montesquieu, Charles, 9, 18, 66, 75, 88

Motherland Party (MP), 4, 78
 MP, *see* Motherland Party
 Mutual dissolution power, 63, 64, 80,
 81, 88

N

National Security Council (NSC), 21
 Nationalist Movement Party (MHP),
 4, 5, 12, 41n3, 43, 47, 55, 61,
 66, 79–81, 88, 89
 Neoliberal economic policies, 62
 Nizamü'l-Mülk, 58
 NSC, *see* National Security Council

O

Obama, Barack, 51
 Obstacles to presidential system, 69
 OECD, *see* Organisation for Economic
 Co-Operation and Development
 Öke, Mim Kemal, 32
 Onar, Erdal, 58
 Organisation for Economic
 Co-Operation and Development
 (OECD), 19
 Özal, Turgut, 4, 32, 33, 78, 79
 Özbudun, Ergun, 60
 Özkan, Fatma Gülçin, 63

P

Parliamentary Constitutional
 Commission, 5, 55
 Parliamentary inquiry, 47, 84, 85
 Parliamentary Rules of Procedure, 47
 Parliamentary system, 1–4, 7–9, 11,
 14, 18–20, 34, 35, 37, 46–48,
 51, 53, 56–58, 60, 63–66, 68,
 75, 77, 78
 in Turkey, 21–23
 Party discipline, 8, 46, 59, 86

Peace and Democracy Party, 4, 79, 80,
 89

People's Democratic Party, 64, 67
 Peru, presidential system, 2
 Planning and Budget Commission, 87
 Pluralist democracy, 8, 86
 Polater, Yusuf Ziya, 19
 Polatoğlu, A., 31
 Political polarization, 8, 59, 76, 86
 Political systems and economic
 performance, relationship
 between, 62–63

Politics, 66

Portugal, semi-presidential system, 14

Power, 2, 5, 6, 8, 9, 11, 14–16, 18,
 24, 25n1, 33, 37–40, 41n3, 44,
 46, 50–54, 56, 58, 60, 61, 63,
 66–68, 70n3, 77, 79–83, 85–87

Preservation of Historical, Cultural
 and the Natural Assets, 50

Presidential decrees, 6, 38, 50–52, 54,
 55, 79, 80, 83

Presidential system, 1, 2, 4, 5, 7–9, 11,
 14, 16, 17, 43–69, 75, 76, 78, 86

historical background of, 31–36

Justice and Development Party,
 36–40

obstacles to, 60–69

opportunities, 57–60

Protection of the Agricultural Workers,
 50

Przeworski, Adam, 20, 64

R

Rationalized parliamentarism, 3, 4, 11,
 23–25, 78, 89

Reconciliation Commission for the
 new Constitution, 4, 5, 35, 36,
 43, 79–81

Republican People's Party (RPP), 4,
 25, 50, 55, 64, 66, 67, 78–80, 89

- Responsibility, 15, 16, 60
 Riggs, Fred W., 20
 Rights on Labor Conditions and Recreation, 50
 Right to Education and Instruction, 50
 Right to Strike and Lockout, 50
 Right to the Protection of the Family and Children's Rights, 50
 RPP, *see* Republican People's Party
 Rule of law, 55, 63, 66, 78, 89
- S**
 Şahin, Hüseyin, 67
 Sarikaya, Muharrem, 25
 Sartori, G., 15, 16, 70n3
 Semi-presidential system, 1–3, 8, 14, 15, 34, 60, 64, 75–77
 Senior public officials, appointment of, 54–55
 Şentop, M., 51
 Separation of powers, 1, 3, 5, 8, 9, 11, 17, 18, 22, 37–40, 44, 48, 50–52, 56, 57, 62, 63, 65–67, 77, 80, 83, 86
 Silva, Lula Dda, 45
 Social Security, 50, 83
 South Korea, 46
 presidential election, 46
 Soviet Union, semi-presidential system, 14
Spirit of the Laws, 18
 Sports Development, 50
 State of law, 67, 78
 Stuart dynasty, 18
 Sub-Saharan Africa, semi-presidential system, 2, 14
 Supreme Board of Elections, 5, 81
 Supreme Court of Appeals, 10, 11, 45, 69n1, 88
 Supreme Military Administrative Court, 12, 55, 69n1, 89
- T**
 Tataroğlu, M., 67
 Team spirit, 34
 Teziç, Erdoğan, 16, 23
 TGNA, *see* Turkish Grand National Assembly
 Trade Unions Rights, 50
 True Path Party, 79
 Tunç, H., 20
 Tuncer, Erol, 68
 Turan, İlder, 68
 Turkey, 3–12
 parliamentary system, 3, 4, 23
 presidential system, 36, 69
 rationalized parliamentarism, 24
 semi-presidential system, 15
 Turkish constitution
 Article 21, 55, 66
 Article 67, 82
 Article 89, 51
 Article 101, 48
 Article 104, 50
 Article 106, 53, 86
 Article 123, 85
 Article 146, 69n1
 Article 161, 56
 Turkish constitution of 1909, 21
 Turkish constitution of 1921, 21
 Turkish constitution of 1924, 21
 Turkish constitution of 1961, 21, 23, 32, 49, 55, 89
 Turkish constitution of 1982, 7, 21–23, 53, 55, 77, 78, 84, 89
 Article 21, 55
 Article 87, 46
 Article 99, 26n4
 Article 101, 6
 Article 104, 37, 38
 Article 123, 54
 Article 145, 55
 Turkish constitution of 2007, Article 101, 52

Turkish Grand National Assembly
 (TGNA), 4, 10, 11, 36, 37, 39,
 41n3, 43–47, 52, 55, 56, 69n1,
 79, 83
 Constitutional Commission, 5, 6,
 10, 51, 81
 General Assembly, 5, 7, 10, 41n3,
 44
 Joint Committee, 44
 Justice Commission, 10
Two Essays on the Government, 66

U

UK, *see* United Kingdom
 United Kingdom (UK)
 parliamentary system, 3, 18, 22, 77
 presidential system, 16, 68
 United States, 45, 46, 51, 53
 parliamentary system, 20
 presidential system, 1, 2, 17, 33, 34,
 40n2, 63, 68, 76, 87

V

Venezuela, presidential system, 2
 Veto power, 80

W

Westminster model, 16, 18
 Westminster system, 76, 77

Y

Yavuz, B., 20
 Yavuz, K. Haluk, 32
 Yazıcı, S., 16
 Yenikapı Spirit, 36
 Yılmaz, Mehmet, 67
 Youth Protection, 50
 Yüksel, Cüneyt, 23

Z

Zero-sum game, 17, 46, 57, 60, 65, 86