



**THE REPUBLIC OF TÜRKİYE**

**SOCIAL SCIENCES UNIVERSITY OF ANKARA**

**INSTITUTE OF SOCIAL SCIENCES**

**IMPACT OF PRESIDENTIAL SYSTEM ON SEPARATION OF POWERS IN  
TÜRKİYE**

**THESIS SUPERVISOR**

**Assist. Prof. SEVAL YAMAN**

**GÖKHAN YILDIZ**

**MASTER'S THESIS**

**in**

**POLITICAL SCIENCE**

**ANKARA – 2024**



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## **PLAGIARISM**

I hereby declare that all information in this thesis has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all materials and results that are not original to this work.

Name and Surname: Gökhan Yıldız

Signature:



## **ACKNOWLEDGEMENTS**

I dedicate this thesis to my dear mother Endam, who brightens my world like the sun with her precious love, always stands by my side, and always supports me unconditionally. I love you more than the stars in the sky, my dear, beautiful mother.



## ÖZET

2016 darbe girişimi sonrasında hız kazanan sistem değişikliği tartışmaları ve bir dizi anayasa değişikliği sonucunda, Türkiye 2018'de parlamenter demokrasiden Türk tipi başkanlık sistemine geçiş yaptı. Diğer başkanlık sistemleri ile benzerlik ve farklılıkları bulunan bu yeni ve kendine özgü sistemin benimsenmesiyle birlikte yürütme organındaki başbakanlık makamı kaldırıldı ve yürütme yetkisi tek bir kişinin ellerinde toplandı. Yürütme organında meydana gelen bu değişiklikler, devletin diğer organlarını, yani yasama ve yargıyı kaçınılmaz olarak etkiledi. Bu nedenle, yürütme, yasama ve yargı organlarının hem kendi içlerinde hem de birbirleriyle olan ilişkilerinde ciddi değişiklikler meydana geldi.

Bu değişikliklerin bir sonucu olarak, yürütmede çift başlılığı ortadan kaldırarak daha istikrarlı bir Türkiye'nin mümkün olacağı veya yürütmenin artan güç ve yetkilerden yararlanarak diğer devlet organlarını kontrol altına alarak anti-demokratik bir Türkiye'nin meydana gelmesine sebep olacağı yönünde geniş çaplı tartışmalar başladı.

Güçler ayrılığı ilkesinin demokratik yönetimler için vazgeçilmez olduğu ve otoriter rejimlere karşı demokratik yönetimi güçlendirdiği göz önüne alındığında, bu tez kapsamında başkanlık sisteminin güçler ayrılığı ilkesine etkisi araştırılacaktır.

**Anahtar Kelimeler:** Başkanlık Sistemi, Kuvvetler Ayrılığı, Türk-tipi Başkanlık Sistemi, Anayasa Değişiklikleri

## **ABSTRACT**

As a result of the system change discussions that accelerated after the 2016 coup attempt and a series of constitutional changes, Türkiye switched from a parliamentary democracy to a Turkish-style presidential system in 2018. As a result of the adoption of this new and unique system, which has similarities and differences with other presidential systems, the office of prime minister in the executive body was abolished and the executive power was concentrated in the hands of a single person. Changes in the executive organ inevitably affected the other organs of the state, namely the legislature and the judiciary. For this reason, serious changes have occurred in the relations of executive, legislative and judicial organs both within themselves and with each other.

As a result of these changes, wide-ranging debates began in the direction that a more stable Türkiye would be possible by eliminating the dualism in the executive, or that the executive would result in an anti-democratic Türkiye by taking advantage of the increased power and authorities to control the other state organs.

Considering that the principle of separation of powers is indispensable for democracies and that it strengthens the democratic administration against authoritarian regimes, effect of the presidential system on the principle of separation of powers will be investigated within the scope of this thesis.

**Key Words:** Presidential System, Separation of Powers, Turkish-style Presidential System, Constitutional Changes

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# **CHAPTER 1**

## **1.1. Introduction**

The presidential system, which was officially accepted in Türkiye as a result of 2017 constitutional referendum and started to be implemented after the 2018 general elections, caused a significant deviation from the parliamentary administration system, which had a deep-rooted history in Türkiye. The transition to new and unique Turkish-style presidential system, had undeniably significant effects on the separation of powers, that is cornerstone of modern democratic administrations. This principle ensures that the state organs, namely legislative, executive and judicial branches function separately, yet harmoniously in order to prevent too much political power from being concentrated in a single person or body to protect freedoms, and provide effective administration

In the new presidential system, the president's role and powers in the political arena have been significantly increased. Abolishment of the prime minister's office and council of ministers caused a concentration of the executive powers in a single person in the executive branch. Under the new system, president is more influential over both the legislative branch and judicial branch of the state. President is allowed to be the member or even the chairman of a party, so that president, through party affiliation, can have more influence over the legislative branch if president's party holds the majority in the assembly. Moreover, the powers of the executive branch in the presidential system extend significantly to the judicial branch as well. One of the important powers of the president is the power to appoint members to the constitutional court. This power allows the president to shape the structure of the judiciary branch of the state. Such appointments can have long-lasting effects on the judicial system and the country's legal structure.

This centralization of executive powers has brought about many debates. President's powers such as appointing senior civilian administrators and electing members of the judicial institutions like the constitutional court, have been evaluated as

undermining factors for the separation of powers and democratic principles. Conversely, abolishment of the prime ministry and the council of ministers, absence of the coalition governments, faster relatively simple decision-making process and direct presidential election offer a stronger administration with higher legitimacy which can thereby increase the public confidence.

When changing a country's administration system, it is crucial to protect its democratic institutions and balance among the branches of the state. Undoubtedly, regardless of the adopted administration system, disharmony between state organs will lead the country to crises. Therefore, this thesis aims to examine how the concentration of executive powers in the executive branch under presidential system affects the balance between branches of the state. This study aims to evaluate whether the separation of powers has been damaged or strengthened by making a comprehensive assessment of the current situation of the separation of powers within the scope of the new system.

Moreover, regardless of the system, the parliament's lack of control mechanisms over executive branch will lead to undemocratic administrations. Therefore, in this thesis, the control mechanisms of the parliament over the executive power will be examined and their applicability and current status will be evaluated both in theory and in practice under the new system.

A key focus of this thesis is the examination of ongoing studies and discussions concerning the separation of powers and the presidential system in Türkiye. It is anticipated that perspectives of scholars on both presidential system and the separation of powers will broaden and strengthen the thesis. This thesis will not only incorporate scholarly perspectives but also consider the perspectives of prominent politicians to offer a comprehensive analysis of the current status and future trajectory of the separation of powers in Turkey under the presidential system.

## **1.2. Main Research Question**

The main question guiding this study is "To what extent has the new Turkish-style presidential system impacted the separation of powers in Türkiye?" This thesis aims to examine how balance of powers between three branches of the state, namely, executive, legislature and judiciary changed after the implementation of the new Turkish-type presidential system. Thesis will evaluate whether the new presidential system enhances executive efficiency while preserving democratic principles or concentrates the balance of power towards one branch, potentially harming the democratic principles.

## **1.3. Methodology**

This study will use a qualitative research design that makes use of secondary data sources such as academic articles, reports, media news and other relevant documents such as constitutional provisions and laws. This study will use a systematic and rigorous approach in the selection and evaluation of sources to provide validity. Sources will be selected based on their relevance with the research question, credibility, and authority. Additionally, sources will be critically evaluated for their biases, limitations, and potential inconsistencies.

By examining these critical aspects, the research aims to contribute to a deeper and more comprehensive understanding of the effects of constitutional reforms on the redistribution of the state power. Findings are ready to contribute to the current body of knowledge on the subject by providing a better understanding of constitutional amendments and new presidential system. In conclusion, as Türkiye moves forward in this new political environment, understanding the impact of the new presidential system on the separation of powers is of great importance for policy makers, academicians and citizens investing in the development of democratic values in the country.

## **1.4. Literature Review**

The transition to the new administration system changed Türkiye's political landscape, especially relations among three branches of the state. Turkish-style presidential system primarily offer enhanced stability. This feature offered by the new

system is of great importance for Türkiye, where unstable governance and crises took place in its history. Many scholars discussed that new presidential system provides more stable governance as a result of the abolishment of the council of ministers and concentration of the executive's power in the president's hands. By doing so, it enables a strong executive leadership, offers more efficient decision-making process, enables president to implement policies swiftly, thereby promotes stability in the country. Additionally, legitimacy of the president in the executive branch increased significantly due to direct representation of the people's will as a result of direct presidential elections. This direct election increases the president's accountability, subjecting the president to both public scrutiny and commendation.

However, an increasing body of scholarly literature claims that this change has led to significant negative consequences in terms of the democratic principles such as separation of the state powers, potentially undermining the democracy in Türkiye. Scholars argued that increased legitimacy and power of the executive could undermine the separation of powers and potentially leading to a concentration of powers instead. The implementation of the new Turkish-style presidential system can potentially enable the executive branch increasing its control over the other branches of the state, potentially disabling their functions. This scenario raises concerns about the potential erosion of democratic principles within the country.

This literature review aims to make a critical analysis of the findings and different perspectives from academic studies, investigating both strength and weaknesses of the new system and the current structure of the separation of powers in Türkiye.

#### **1.4.1. Discussions on Speed and Economy**

In this concept, presidential system is praised in terms of speed in the decision-making process by many scholars. Surely, presidential system brings the speed with itself because the government is to be ruled by a single source. The abolition of the council of ministers and the office of the prime minister also eliminates potential conflicts between these parts of the executive branch. Furthermore, president can now alone issue presidential decrees and regulate any subject that falls within the scope of the executive's duty faster. That will contribute to stability and enable the country to quickly confront with crisis situations. This prevents the governing system from having to wait for time-

consuming debates by parliament to decide on any issue. Çığman (2021) discussed that, given the slowness of the legislative process, the new system provides advantage in terms of speed. Also, presidential decrees in the public administration will both contribute to the performance improvement and also reduce the bureaucracy.

The presidential system would also positively contribute to the stability of the country. It was believed that the decision which comes from single source would be better than coalition governments with conflicting views. Oruçlu (2008, 26-28), argues that a president elected for a fixed term cannot be dismissed by a vote of no confidence. Therefore, president is not subject to pressure from coalition members or the assembly. Thus, governmental crises are less likely to occur compared to a parliamentary system.

High velocity is not always beneficial for a nation because it can accelerate the tendency towards collapse. Rapid progress can worsen underlying problems rather than solving them, potentially leading to deterioration even faster. Therefore, there are opposing views to the Oruçlu on this regard. One opposing view comes from Mahfi Eğilmez, (2022) who evaluated the Turkish Economy in terms of economic indicators such as GDP (Gross Domestic Product), unemployment rate, inflation, budget deficit, current account deficit, per capita income and CDS (Credit Default Swap). Eğilmez evaluated the Turkish Economy before and after the presidential system and concluded that deceleration in the Turkish economy accelerated after the presidential system. In this matter Eğilmez argues following indicators:

- GDP: As of 2003, during the first years of the Justice and Development Party (AKP) rule, Turkish economy was the 21<sup>st</sup> economy in the world with 315 billion Dollars of GDP. In 2017, the last year before the change in the administration system of the country, Türkiye ranked 17<sup>th</sup> economy with GDP of 851 billion Dollars. After the transition to the presidential system, it started to lose ranks rapidly. While its GDP decreased to 807 billion Dollars in 2021, it fell to 21<sup>st</sup> place in the ranking, as in 2003.

- Employment: In 2003, the unemployment rate in Türkiye was 10.1%. In 2017, the last year before the presidential system, the unemployment rate was 10.9 percent. The rate was 11.3 percent at the end of 2021 and 11.5 percent as of March 2022.

- Inflation: Inflation in Türkiye was 18.3 percent in 2003. In 2017, the last year before the presidential system was introduced, inflation was 11.9 percent. In 2021, inflation had risen to 36.1 percent. In April 2022, inflation increased to 70 percent. As a result of the indicators, Türkiye, which managed to reduce inflation significantly before the transition to the presidential system, seems to have completely lost control after the system change.

- Budget Deficit: In 2003, the budget deficit was 8.6 percent of GDP. In 2017, the last year before the presidential system was introduced, deficit in the GDP decreased and calculated as 1.5 percent of the Turkish GDP. Deficit in the budget became 2.7% of the Türkiye's GDP by the end of 2021. Accordingly, deficit in the budget during the AKP government decreased until the transition to the presidential system, and it is seen that it started to increase again after the change in the system towards Turkish-style presidential system.

- Account deficit: Account deficit of Türkiye was 2.5 percent of its GDP in 2003. In 2017, the last year before the presidential system, current account deficit ratio to the GDP became 5.5 percent. Although the current account deficit decreased to 1.8 percent by the end of 2021, this rate increased to 3.2 percent in the first two months of 2022.

- Average per Capita: In 2003, the average per capita income in the world was 6,108 Dollars, in Türkiye it was 5,953 Dollars. Before the transition to the presidential system, per capita income in Türkiye was 10,537 Dollars in 2017, roughly the same level as the world's per capita income (10,724 Dollars). At the end of 2021, while the per capita income in the world has increased to 12,228 Dollars, Türkiye's per capita income has decreased to 9,528 Dollars.

- CDS Premium: The 5-year CDS premium, which shows the country's risk premium and is determined entirely according to the supply and demand rules in the market, was 157 basis points at the end of the 2017 before the change in the administration system of Türkiye, later on premium increased to 566 basis points at the end of 2021. Premium 715 basis points in mid-May 2022. If the CDS premium exceeds 300 points, the

country is considered extremely risky. This CDS premium puts Türkiye in the position of the third riskiest economy in the world.

Eğilmez concludes as a result of his findings that, Türkiye implemented a strong economic transition program during the first decade of the AKP's governance, supported by abundant global liquidity and the initiation of membership negotiations with the European Union (EU). However, starting from 2014, Türkiye experienced a period of economic slowdown. The deceleration accelerated after the change in the administration system in Türkiye. Today, Türkiye appears to be following an economic policy that relies on borrowing and swap transactions to get through each day. This short-term approach entails sacrificing two future days for every day saved.

#### **1.4.2. Discussions on Simultaneous Elections**

It was decided upon with the new system that the elections of Turkish Grand National Assembly (TGNA) and the head of executive body will take place on the same day in every 5 years.<sup>1</sup> This change in the new system became a major topic of debate with both supporting and opposing views.

In this regard, Doğan (2017) argues that the regulation regarding simultaneous elections aims to ensure that the parliament and the president have the same political tendency. When the elections for the executive and legislative branches will take place on the same day, the political party which gains the political majority will win both executive and legislative powers. This arrangement eliminates the obligation of the legislative and executive bodies to restrict, control and balance each other. Consequently, the legislative body might be controlled by the executive body.

According to Gözler (2016), the main purpose of the constitutional changes is to create a unity of powers system in Türkiye. The reason for holding simultaneous elections for both organs is precisely for this purpose.

Given that the president is also the leader of a political party participating in the elections, simultaneous elections may lead to increased government influence over the

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<sup>1</sup> Article 77 of Constitution of Türkiye.

TGNA and can actually result in the consolidation of powers rather than reinforcing the separation of the state powers. It would not be reasonable for citizens to vote for a president in the government and the president's rival in the legislative branch. On the contrary, citizen who votes for the president in the government would most likely to vote in favour of the candidate from the party that is being led by the president. Bektaş (2019, 208-209), argues that, holding separate elections for the legislative and executive branches helps to distinguish between these two organs. However, the same party or alliance would dominate both organs thanks to similar political preferences of the voters as a result of simultaneous elections.

Venice Commission (2017), discussed that, conducting simultaneous elections can threaten the balance of powers and ensure executive branch an increased authority over the legislative branch, while separate elections can help protect the separation of powers and prevent single political party from dominating the other branches of the state. The Commission explains that, holding combined elections can result in a "winner takes all" scenario, where the political party or alliance that wins executive organ also gains control of the legislative organ. This potentially undermine separation of state powers and result in a concept of unity of power that is more characteristic of less democratic systems.

In Türkiye, where a disciplined party system prevails with the party leader and a small cadre dominating the entire party, simultaneous elections can lead to serious risks in terms of separation of powers. Strong ties between the deputies and their parties can negatively affect the independence of the deputies thereby weakening the parliament and strengthening the position of the government. Bektaş (2019, 205-215), addresses this issue by noting that: New presidential system with disciplined party framework where deputies hold strong affiliations with their parties has led to weakened legislative branch in relation to the executive. Those close relations of deputies with their parties lead to a significant decrease in their independence as a result of disciplined party system. Thus, legislative branch can check the executive only when a different party rather than ruling party has the majority in the legislative. Considering dependency of deputies on their parties, strong party discipline that limits the autonomy of the representatives, and executive powers that do not require legislative approval, provides a governmental system in which the legislature has limited powers, in other word weak, while executive has

substantial powers. As a result, establishing effective legislative oversight over the executive and democratizing the system becomes challenging.

Yazıcı (2019, 20-22), however stressed that both legislative and executive organs are formed through in a single election in a parliamentary system too. Therefore, this reason alone should not lead to the perception that the system is not democratic. Furthermore, the notion that the same political leaning will always prevail in both executive and legislative elections is merely a presumption. It is clear that parties could not fully control the legislative branch even though there were alliance during the elections.

About simultaneous elections, President Erdoğan stated his own view on a TV program before the second round of presidential elections of 2023:

“If you desire a healthy governance, it is essential for the executive and legislative branches to be in harmony. If such a healthy structure does not emerge, there will be consequences because the coherence and solidarity between the legislature and the executive have significant positive effects on the future of a country. The collaborative work of the executive and legislative branches always serves the development of a nation. When changing the government system, we actually ensured that the presidential and parliamentary elections were held simultaneously for this very reason. The purpose of this meant the renewal of the parliament along with the president to be elected. For stability and trust, it is crucial for the executive and legislative branches to be coordinated. Strong presence of the Cumhur Alliance in the parliament also strengthens us as a government.”<sup>2</sup>

As a result of the simultaneous elections of 2018 and 2023, the Cumhur Alliance (People’s Alliance)<sup>3</sup> gradually won 344<sup>4</sup> and 323<sup>5</sup> out of 600 seats in the legislature. Analysing the Erdoğan’s view regarding combined elections in the light of these results, especially his statement that “The strong presence of the Cumhur Alliance in the parliament also strengthens us as a government” increases credibility of critics which

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<sup>2</sup> CNNTURK’s interview with President Erdoğan, [https://youtu.be/3\\_62MiopJAO](https://youtu.be/3_62MiopJAO) - Access Date: 19.06.2024

<sup>3</sup> The Cumhur Alliance is a political alliance established in Türkiye between AKP and the Nationalist Movement Party (MHP) in 2018.

<sup>4</sup> YSK- Supreme Election Board – Available at this webpage: <https://www.ysk.gov.tr/doc/dosyalar/docs/24Haziran2018/KesinSecimSonuclari/2018MV-96D.pdf> - Access Date: 21.07.2024

<sup>5</sup> YSK- Supreme Election Board – Available at this webpage: <https://www.ysk.gov.tr/doc/dosyalar/docs/14Mayis2023CBSecimIstatistik.pdf> - Access Date: 21.07.2024

argue that simultaneous elections could increase the authority of the executive over the legislative branch.

### **1.4.3. Discussions on Re-Elections**

The issue of renewing the elections caused extensive discussions in academic circles and revealed both supporting and critical perspectives. In the Turkish-style system, both the president and the TGNA have authority to dissolve each other through renewing the elections. While this dual power is perceived as a potential solution to political deadlocks, it also raises concerns about its consequences for the separation of powers and the rule of law in Türkiye.

Furthermore, it should not be forgotten that in this adopted system, the president is not required to remain neutral and can actively lead a political party in simultaneous elections. This could lead the country to instability, despite claims for presidential system to provide stability. Bektaş, (2019) emphasized that if the party of the president does not obtain the majority in the assembly, political instability may occur. In such a scenario, president has the power to decide for re-election which can increase the level of instability in the country's political environment.

According to Gözler (2016), the reason behind granting the authority to the president and TGNA to renew each other's elections is to establish the unity of powers. The goal is to ensure that the president and the TGNA majority are from the same party. If the party supported by the president does not secure a majority in the legislature, the president can decide for re-election for both presidential election and the TGNA elections to establish the unity between both branches. Once this unity of powers achieved between those branches, the independence of the TGNA from the president will be abolished, all in all the executive branch will control the TGNA.

However, granting authority to renew the elections to the president could increase stability, especially if the members of parliament and the people who choose them become incompatible with each other. Former President Süleyman Demirel expressed the following on this issue:

"The public is very dynamic. The political tendencies in the public change along with the political tendencies in the parliament. Within 3-4 years, the public often takes a completely different direction from the deputies in the parliament. Then, it is

necessary to renew the election. Failure to renew the election causes a depression. If Türkiye could have gone to the elections in 1960, a coup wouldn't have taken a place. If in June 1980, I could have taken Türkiye to an election, there wouldn't have been a crisis again. It is not easy to remove an elected government from power. It is wrong to grant the renewal of parliamentary elections authority to the person who will be elected. In Europe, 7 countries have granted this authority to the president. Let the elected President declare the election."<sup>6</sup>

Yazıcı (2019, 20-25) similarly argues that since culture of democracy has not yet been fully internalized and different political tendencies of conflicting political structure exist, specific measures have been taken to ensure the flexibility of the system and prevent a possible political deadlock. Therefore, main purpose of these measures is to overcome any possible political stalemate and to ensure the adaptability of the system to these unique circumstances.

Moreover, it remains unclear whether the president will truly use this authority to save the country from the crisis, or whether will use this authority to undermine both the powers of the TGNA and the separation of powers to establish a dictatorship. Critics argue that since president is free to call for re-election on any ground and the TGNA must reach a three-fifth of majority, this measure may turn into a tool for president to be used over legislative branch. Thus, the regulation can be counted as a detrimental regulation against the separation of powers.

Gözler (2018), discussed on the subject that, the president may decide regarding the re-elections within the scope of its personal discretion with no specific condition. Although a similar power is theoretically granted to the parliament, the difficulty in achieving the required qualified majority in the TGNA makes it practically possible for this power to be exercised only by the president.

Venice Commission (2017), noted that, while the parliament has to obtain a certain majority in order to use this power, the president can dissolve the legislative branch anytime. This power is exceptionally rare in purely presidential republics, as it risks undermining the separation of powers. The power of the executive branch to

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<sup>6</sup> Süleyman Demirel's speech. Youtube: <https://www.youtube.com/watch?v=zHZf-qyWwMc&t=45s> – Access Date: 03.06.2024

dissolve parliament is undoubtedly a pressure on the legislature branch. Thus, this regulation can be detrimental for the separation of powers.

#### **1.4.4. Discussions on President's Influence over Legislative Branch**

As previously stated, the new system does not require a politically neutral president within the government. Instead, the president becomes stronger through direct elections and the elimination of other factors within the executive branch other than the president. In this context, the president has the authority to lead a political party, call people to vote for the party candidates, influence the selection of parliamentary candidates through the party affiliation and play a significant role in all substantial decisions within the party.

In the parliamentary system, executive body is distributed among president, prime minister and the council of ministers. Although constitution provides guidelines and legal limitations for each of them, disagreements between these parts of the government can occasionally lead to confusion and crisis. Regarding this matter, Kırıřık and Öztürk, (2020, 165-175), discussed that, in the parliamentary system of administration, the executive organ operates within a complex network of relationships involving numerous actors and bodies in decision-making processes. Political responsibility and symbolic authority were regulated together, distinguishing the representation of the state and the government. This distributes the executive power within itself and causes confusion about responsibility. Thus, new Turkish-style system eliminates the problem of dual leadership of the executive branch by eliminating other actors within the executive branch other than the president and consolidates the powers of the executive branch in the hands of the president.

Without a doubt, non-neutral president coupled with the simultaneous elections raise concerns regarding separation of powers. Dođan and Geyik, (2020, 30-35), discussed in this context that, a person who became the president and also the leader of a political party can intervene in the legislative functions of the TGNA due to the possibility of determining the parliamentary candidates and having a strong directing authority over the members of the parliament who became candidate from the president's party, thanks to the impact of a disciplined party tradition. Furthermore, a party-affiliated president who holds an arithmetic majority can prevent the adoption of any law that contradicts

with a presidential decree, can propose any law under the pretext of a legislative proposal through the members of parliament in the legislature and ensure its enactment.

The Venice Commission, (2017) noticed that, granting the president the authority to rule over a political party would give president an opportunity to have influence over the legislative branch which raises concerns with regard to separation of powers.

Another significant change introduced by the new Turkish-style system is the president's authority to appoint high-level civil administrators, terminate their duties, and regulate the procedures and principles related to these actions through presidential decrees.<sup>7</sup> Additionally, the constitution does not clearly define who the high-level civilian administrators are. This further increases the powers of the executive in this area. The fact that the executive can alone reorganize the upper civilian levels of the state without the approval of the TGNA shows that the president has a much stronger position against the legislature branch of the country comparing with the parliamentary system times. Venice Commission (2017), therefore argues on this matter that, broad description of "high level state officials" allows president to decide which positions will be covered. If president agree upon an extensive interpretation of this term, amendment will grant a significant authority to president to decide who will be holder of those key crucial positions. Furthermore, president not only makes important appointments of those officials to the crucial positions but also establish the principles relating to their appointments by presidential decrees. In this situation, president is both legislator and an executor at the same time.

Similarly, Keskinsoy and Kaya, (2018, 90-91), discussed that presidential system in Türkiye may lead to significant dilemmas. Lack of checks and balance tools by which TGNA can limit the government in the new system, may result in authoritarianism or even worse.

Simultaneously, there are advantages with this change as well. One of the advantages of the regulation on this matter is that the president can benefit the expertise

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<sup>7</sup> Turkish Constitution, Article 104.

from the private sector. Also, it will be faster to appoint an individual by presidential decree in case of an absence in a position within the state. Having not to be waiting too much time for appointment to be approved in legislative branch can be viewed as advantage of this regulation. Therefore, Alkan (2018, 144-145), evaluated this regulation by stating that, this regulation aimed to ensure effectiveness in the executive branch.

### **1.5. Structure of the Thesis**

This thesis structured in 4 sections:

1. **Introduction and the Literature Review:** Introduction will provide the scope and the objectives of the thesis. The literature review will include both critiques and supportive perspectives on the adopted Turkish-style presidential system.
2. **Theoretical Foundations:** Thesis will explore the theoretical roots of the separation of powers and presidential system in the second section. This section will provide the necessary theoretic background to the thesis in order to better analyse the shift towards the presidential system in Türkiye and its impact on the separation of state powers.
3. **Constitutional Changes and Their Impact in Türkiye:** The third section will provide and evaluate the constitutional changes brought by the presidential system. This section will include an overview of the constitutional amendment and analyse their impact on the separation of powers in Türkiye. It will also examine the roles and relationships between the legislative, executive and judicial branches of the state following the adoption of the presidential system.
4. **Conclusion:** The last part of the thesis will summarize how the impact of the Turkish-style presidential system implemented in Türkiye. It will reflect how the key points of the roles and functions between three branches of the state affected by the newly adopted presidential system.

## **CHAPTER 2**

### **2.1. Origins of the Separation of Powers**

“Power tends to corrupt and absolute power corrupts absolutely” said by Lord Acton (1949). This is the reason why governmental systems need checks and balance mechanisms.

For this very reason, accumulation of all power in the president’s hands poses significant risks and threats, potentially leads to unchecked power and all in all weaken the democratic principles within country. Thus, power of the state separated among different branches which would prevent the corruption in administration, safeguard individual liberty and strengthen democracy. Separation of powers in this sense is a political theory that divides the powers of the state into separate branches, each with its own specific and unique roles and responsibilities, designed to operate independently from one another. The main purpose of the separation of powers is to prevent any one branch of the state from becoming overpowered and to allow each branch to act as a control mechanism over the other two branches of the state, yet function in harmony.

Separation of powers should not be considered exclusively as a political theory that concerns only political activities of the state and therefore it does not concern the people who form the society. Separation of powers has a direct impact not only on the organizational structure of the state but also on the principles such as democracy and the freedom of people living in the society. The main reason for this is that the separation of powers is a political theory which prevents individual rights from being endangered as a result of the establishment of a tyrannical administration that disregards the law and democracy.

Thus, Gözler (2014, 217-220), defines the separation of powers as a theory that supports the division of the state power in three separate branches: legislative, executive, and judicial. Each of them operates independently from the other branches, to be able to limit the state power and to protect the fundamental rights and freedoms of the citizens.

The separation of powers is especially important in a presidential system because one branch of government is given significant executive authority. This concentration of executive power can threaten the balance of powers between the branches of state. The president as the key figure in a presidential system, may exploit his/her increased power and attempt to establish a dictatorship.

Correct understanding of the presidential system and separation of powers is essential for effective functioning of democratic institutions and the preservation of the rights and freedoms of the individuals. Through this section of thesis, we will understand the historical roots that have shaped the development of both presidential system and separation of powers over the centuries. This journey highlights progression of ideas on those matters through the influence of key thinkers, and the historical events that have advanced these theories.

By presenting a clear and comprehensive conceptualization of these concepts, this chapter will form the basis for the analysis on the impact of the presidential system on the separation of powers in Türkiye. In addition, by examining presidential system and the concept of separation of powers in detail, dear readers will be able to better evaluate to what extent the Turkish government system is loyal to the cornerstone of democracy, that is, separation of powers.

This principle has its roots in the ancient world where the democracy, mixed government system and the state were discussed and flourished. Theoretical origins of the separation of powers are generally goes back to the Aristotle. The reason for this is because he observed and examined the governance structures of city-states of the Ancient Greece, identified three basic functions which were adopted within these city-states, and examined their characteristics (Karakul 2015, 65-75).

Aristotle, one of the most important philosophers in the history introduced the fundamental ideas that have contributed significantly to the concept of the separation of

powers. Wrote in ancient times, Aristotle was among the first thinkers who explored the separation of the state functions. Aristotle's importance in the development of separation of powers is significant, as his political philosophy established the fundamental guidelines for later theoretical developments. In his work "*Politics*", Aristotle classified the governments into monarchies, aristocracies, and polities, and discussed their corrupt counterparts, finally emphasized the importance of balanced power to prevent tyrannical administrations and abuse of power. Aristotle advocated a type of mixed government system that includes features of monarchy, aristocracy, and democracy.

Ancient political philosophers like Aristotle formed the basis of the Mixed Constitution by classifying constitutions according to the number of rulers: rule by one person(monarchy), rule by a minority (aristocracy), and rule by the majority (democracy). The theory reached its classical form with Aristotle Hansen (2010, 515-520).

Aristotle (1999, 95-105), discussed on this subject that, in every constitution, there are three fundamental functions. The first element is the deliberation about public affairs; the second element is regarding the magistrate; the third is about the judicial power. Each of these functions carries distinct responsibilities. For instance, legislative branch will have authority to decide on war and peace, making alliances or cancelling it, passing laws, inflicts death, exile and elects' magistrates.

Aristotle did not emphasize the division of individuals. Instead, he believed that, these distinct fundamental functions should be given to the same people. According to Aristotle, the classes of warriors and advisors are different, because warriors are stronger, while advisors are wiser. This difference, according to Aristotle, comes from different periods of life as the young people are stronger and the older people are wiser. However, he also accepts that those with military power cannot permanently be subject to others. Therefore, he argues that the individuals are the same, since those with military power will always have the power to determine the constitution. Thus, in the thoughts of Aristotle the ideal constitution should give both powers to the same people (Aristotle 1999, 160-170).

Separation of powers did not arise only from philosophical thoughts. It had practically applied in many ancient civilizations. These ancient civilizations had

attempted to provide balance in the state by dividing the powers within their administrations through the mixed government system. Calabresi, Berghausen, and Albertson (2012, 520-540), pointed out that civilizations such as Sparta, the Roman Republic, and the Republic of Venice all governed through mixed government system.

Polybius (2010, 370-385) argued on the mixed system as the best system of government. It combines features of all three constitutions: monarchy, aristocracy, and democracy. He emphasized that the constitution of Rome embodied this ideal by combining the three fundamental structures derived from those systems. Constitution of Rome could appear monarchical, aristocratic, or democratic, depending on its focus. This was as a result of different powers that granted to the consuls, the Senate, and the common people, respectively. Thus, the constitution of the Rome effectively balanced these elements, made it an important example of a mixed administration system.

Karakul (2015, 65-70, cited from Okandan, 1938), that in the Athenian democracy, political responsibilities in the society were distributed among different government bodies such as the Assembly, the Council of Five Hundred, the Magistrates, and the People's Courts, based on their nature of the duties. Within Ancient Rome, the distribution of the powers varied over time, however the elements of the mixed government system existed. In this regard, Consuls, the senate, assemblies of the people existed in the Roman Republic. During the Republic period of the Ancient Rome, the control and supervision powers of the two consuls over each other and the obligation to be accountable to the Senate, when necessary, show that the balance between powers was tried to be achieved.

These ancient civilizations did not directly adopt the separation of powers within their administrations, despite the existence of distinct functional divisions in the exercise of power. Vile (1998, 20-30) argued by focusing on the research of Fritz (1954) and Vinogradoff (1922), that the main aim of the ancient constitutional theorists was to achieve a balance among the various classes of the society. Different interests within society take their place in the governing bodies of the state. Each of them has an authority in the execution of the deliberative, magisterial, and judicial functions of the state. Thus, the Greece and Rome were governed by the mixed government system, not the separation of powers.

Calabresi, Berghausen, & Albertson (2012, 532-534), discussed that, while mixed Regime continued to be one of the leading concepts of the political philosophy until the 17<sup>th</sup> century, the collapse of feudalism and the American Revolution also brought an end to the Mixed Regime Administration. The American Revolution was built upon the notion that all people are created equal. Therefore, all power should be in the hands of the many, the people. This change in political thought accelerated after the English Civil War and found intellectual support as a result of the works of political thinkers such as John Locke and Montesquieu. These scholars sought an alternative to the Mixed Regime, which favoured a system where the power would be exercised by majority rather than concentrated in a single institution that is prone to corruption. The search for an alternative system to the Mixed Regime where the power separated based on the social classes, caused to the foundation of the functional separation of powers, which assigns different roles to three branches of the state. This functional separation of powers conceived to provide a protection against authoritarianism and promote stability and integrity within the system. The English Civil War was significant in terms of the separation of powers because England was thought to represent the Aristotelian Mixed Regime administration. Thus, it was believed by many people that England was being governed by a kind of Mixed Regime as Aristotle described. Three estates of the England, namely the King, House of Lords and House of Commons were representing respectively the one, few and the many.

Vile (2008, 685-690), discussed that, conflict between those estates in England, known as the English Civil War<sup>8</sup> caused the transformation of the separation of powers from medieval and ancient concepts into the modern form, furthermore, obtained its

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<sup>8</sup> **English Civil War:** This period defines a civil war that broke out in England between 1642 and 1651. The war resulted from the political and military conflict between the government of Charles I and the English Parliament. The main causes of the war were Charles's quest for absolute power, Parliament's desire to protect its powers, and religious differences. The war broke out between the Parliamentarians and the Royalists. The victorious Parliamentarians executed Charles I and abolished the monarchy, declaring England a republic.

precise expression during the Protectorate.<sup>9</sup> Opponents of the royal power argued that King should be concerned only with the execution of the law, therefore the King must be excluded from the law-making process. This conflict between the King and the Parliament sharpened the differences in the roles of the government. After the Civil War, a new constitution had written in 1653, known as “Instrument of Government”, in which the legislative power had given to the parliament while it had granted only suspensive veto of 20 days to the Lord Protector<sup>10</sup>. Although it was never implemented, it holds significant importance for the separation of powers.

One of the most important figures in the political and intellectual development of seventeenth-century England, the Enlightenment thinker John Locke was born at a time when Charles I attempted to govern the country without the support of Parliament. Locke's father was in the Parliamentary army during the Civil War against the arbitrary authority of the king. Locke also witnessed the execution of King Charles I in 1649 and the republican experience of the following years (Toku 2003, 18-30).

John Locke witnessed significant political upheaval and power struggles throughout his life in England. He first witnessed the authoritarian and arbitrary rule of Charles I and the resulting political crises. Following this, he observed the military dictatorship and absolute power under Oliver Cromwell. After Cromwell's death and the restoration of the monarchy, Locke also witnessed the oppressive rule of Charles II and especially James II. These experiences deeply influenced Locke's political thought, leading him to focus on concepts such as individual rights, the legitimacy of government, and the sovereignty of the people. As a result of this insecurity and turmoil caused by authoritarian governments, Locke wrote “*Two Treatises of Government*”, which rejected authoritarian and divine rule and attributed the source of government directly to society.

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<sup>9</sup> **Protectorate Era:** After the English Civil War, period between 1653-1659 was governed by Oliver Cromwell. Cromwell assumed the leadership of England and transformed the country into a republic, named this period the "Protectorate." Reality in this period was a military dictatorship under Cromwell. Following the Cromwell's death, the Protectorate era came to an end, Parliament restored and the Charles II returned to the throne

<sup>10</sup> **Lord Protector:** According to Article II “exercise of the chief magistracy and the administration of the government” belongs to the Lord Protector.

In his book, Locke emphasized that, people lived in a state of nature, that is, in a state of perfect freedom to regulate their actions, to use their property as they wish, without asking permission or depending on the will of anyone else. Since everyone is equal in this state of nature, everyone has the right to punish a criminal and to be the enforcer of the law of nature. However, this situation will also lead to injustice and unfairness. It is unacceptable for a person to be a judge in his own case, and therefore God has definitely appointed government to limit the partiality and violence of people. It is also very important what kind of government is presented as a remedy for these injustices. Rulers are also humans, and a government in which the ruler rules the majority, is the judge of his own cause, and can do whatever he/she wants to his subjects and everyone submits to him is worse than the state of nature. It is worse than state of nature because in the state of nature people do not have to submit to the unjust will of others (Locke (1980, 4-10).

Locke argued that, people in a state of nature formed the political state through a social contract firstly because of the threat of war. Secondly, the purpose of establishing the state is to secure people's fundamental rights and freedoms and to enable people to achieve a higher quality of life. Furthermore, one another important purpose for people to leave the state of nature is to protect their lives and liberties, which Locke collectively calls "property" (Cevizci 2009, 340-380).

Locke argued that people willingly abandoned the freedoms they had in the state of nature and established societies. People established governments by common consent because even though state of nature grants very broad rights to the people, the use of these rights is quite uncertain and vulnerable to attacks and interventions from others. This situation makes people willing to abandon the state of nature and form the community in which they will mutually protect their lives, freedoms, goods, and generally their property. To escape the state of nature, people quickly retreat into societies, where they need an established law that sets standards of right and wrong, established by common consent and accepted as a common standard for resolving disputes. There is also a need for a judge who will not act partially and who will have authority to decide disputes in accordance with the established law. It is injustice when everyone has right to be the judge and executive in the state of nature. The inconveniences to which each man is subjected

by the irregular and uncertain exercise of his power to punish the crimes of others, make them look for refuge under the established laws of the government, and endeavour to preserve their property. This leads everyone to voluntarily delegate the power of punishment to those appointed for this purpose among them, to be exercised according to the rules approved by the community or by those authorized for this purpose. This is the original right and origin of the legislative and executive powers, as well as of governments and societies themselves (Locke 1980, 39-45).

This settled society is based on the consent of the people and needs legislative, judicial and executive body. According to Locke, each individual creates a political power by assuming certain obligations to other individuals in the society with their own consent. This agreement is a contract in which each individual agrees to obey the majority decision and act accordingly. This consent and majority rule are the sources of political legitimacy (Cevizci 2009, 340-380).

According to Locke, individuals should come together no matter how happy they are in the state of nature, because in that case, they are likely to harm each other. Because according to Locke, individuals need to make a contract to get rid of the insecurity in the state of nature. Thus, the state, that can keep them under control, can protect them from the crimes they will commit against each other (Heywood, 2014, as cited by Kömürçü, 2023, 30-35).

John Locke, who closely witnessed the collapse of governments that attempted to rule without the consent of the people and the problems they caused while collapsing, based the foundation of government on the consent of the people. He regarded the legislative body, which receives its authority directly from the will of the people, as supreme and the most sacred authority. Locke argued that legitimacy rests solely with the legislative body that functions with the consent of the people. Nevertheless, he stated that even the supreme legislative body must be constrained by limits and shouldn't rule arbitrarily. It is a power solely for protection and for this reason it shouldn't have the right to destroy or deliberately impoverish the population. Locke touched upon the importance of the existence of the judicial institution and pointed out that the legislative shouldn't act as a judge. Furthermore, the legislature should not govern with temporary arbitrary

decrees. It must carry out its duty to dispense justice through permanent laws and authorized judges (Locke 1980, 40-45).

In Locke's dual model, the primary check over the executive was given to the legislature. When the executive branch attempts to undermine the independence or oversight of the legislature or to remove the restrictions it has placed on itself, it means an attempt to exercise absolute power. Absolute power threatens the public interest by increasing the risk of arbitrary rule (Jenkins 2011, 544-550).

Locke argued that there is no need for legislative power to be always in being. Because, it is not necessary to make laws continuously, but the implementation of existing laws is continuous. Also, according to Locke, the separation of powers is not enough and it is important that the separated powers should be used by different people. Locke argues on this issue that, human nature tends to be attracted to power, and therefore the people who make the laws and the people who execute them must be different from each other. Otherwise, those people may exempt themselves from obedience to the law they make and adjust the laws to suit their own private interests. The persons who make the law must also obey the law they made. Therefore, in orderly societies where the welfare of the majority of the society is a priority, legislative power is given to various individuals who come together and have the authority to make laws. Once enacted, they themselves become subject to the enacted laws. By doing so, strengthening the commitment to enact laws that serve to the public good (Locke 1980, 46-47).

Montesquieu, lived from 1689 to 1755 and was one of the leading thinkers of the Age of Enlightenment. This period is known for the rise of the concepts such as reason, science and freedom. Montesquieu made significant contributions to political theory and legal philosophy. In "*The Spirit of the Laws*", he provided the foundations of modern democracies by defining the separation of powers. Montesquieu argued that the legislative, executive and judicial powers should be independent of each other in order to prevent despotism and protect individual liberties. With his ideas, Montesquieu played an important role in shaping both the Enlightenment and modern democracies.

With the understanding brought about by the Renaissance, mindset of people changed and shifted their focus from the afterlife to this world. Instead of concepts such

as heaven and hell, people began focusing on the problems and values of this world, engaged in free research and thinking activities, aimed at uncovering truths (Yıldırım, 1974, cited by Korkmaz, 2022, 34-35).

The 18<sup>th</sup> century was a period in which reason took center stage. Experimentation and observation were used alongside reason as methods of acquiring knowledge. The focus of study shifted from nature to humanity, marking a period dedicated to understanding people and examining society (Tütengil, 1977, as cited by Korkmaz, 2022, 34-35)

With the Enlightenment, the natural law approach began to take a certain form again. Accordingly, the most important feature that distinguishes humans from other living beings is that they have reason and will. All people have the reason. Kings, nobles and clergy don't have a superior and stronger reason than others. Thus, during this period, attempts were made to eliminate the differences between classes in society and it was emphasized that since all people have reason, there should be equality in governance (Öktem, 2011, as cited by Kaplan, 2022, 4-10).

Montesquieu mentions the importance of laws before touching on separation of powers, which is an inseparable part of democracy. According to him, laws arise from the nature of things. All have their own laws. God has his own law, the world we live in has its own law, animals have their own law and people have their own law. Montesquieu argues that the world has existed for many centuries and that its movement and existence are guided by unchangeable laws. He argues that the world would not exist without unchangeable, fixed rules (Montesquieu, 2001, 18-19).

Montesquieu, like Locke, argues that there were laws of nature before the establishment of society. According to him, these laws stemmed from the existence and structure of people. Montesquieu discussed the law of nature as follows:

- Before societies were formed, people were afraid and felt weak. Therefore, peace was the first law. Because people saw themselves as inferiors instead of equals.
- The second law of nature is basically the humans need for nutrition.

- The attraction that arises from the differences between the sexes, natural inclination they feel towards each other, is the third law of nature.

- Fear will cause people to avoid each other, but this fear will soon lead people to associate with each other. Therefore, humanity has a new drive to unite; the fourth law of nature stems from the desire to live in the society.

Montesquieu (2001, 20-22), argued that the state of peace that prevailed before societies were established, will disappear when people enter into society. According to him, people living in groups will lose their sense of weakness and a state of war will start. Societies will feel their own power and different nations will fight with each other. Therefore, peace will end between societies and war will start. Individuals who form societies will also realize the power they have within the society and will try to use the advantages of society for their own interests. Thus, war will also occur between individuals. These two situations will lead to the emergence of human laws. According to Montesquieu, the most suitable government for nature is the one that best matches with the tendencies of the people for whom it is established. Because the power of individuals can only be united by the unification of their wills. In order for the people's will to be united, the government that is established must not be different from the characters of the people.

Montesquieu goes beyond John Locke by contributing two significant values to the separation of powers. Montesquieu, integrated the executive branch by not viewing federative power as a distinct element as Locke. Foreign affairs considered to be regulated by the federative power according to Locke. However, foreign affairs viewed as a part of executive power by Montesquieu. Also, on the contrary to Locke, judiciary granted with an independent, distinct power by Montesquieu while Locke viewed it within the executive power (Friedrich, 1999, 35, cited by Yürgüç, 2021, 49-50).

Montesquieu, who attributed the authority to deal with international affairs to the executive power and discussed the judicial power as a separate state organ, said that there were three kinds of power in every state. These were the legislative, the executive and the judicial. The legislative enacts temporary or permanent laws, changes or repeals those already enacted. The executive decides on peace or war, sends or receives ambassadors,

ensures safety, takes precautions to prevent invasions. Judiciary punishes criminals or settles disputes between individuals. People's freedom is the peace of mind that arises from conviction that every person has their own security. To have this freedom, the government must be formed in such a way that no person needs to fear another. Therefore, if the legislature and executive powers are combined in same person or in the same body, there would be no freedoms. Because an authoritarian tyrant would make the laws and implement them in a tyrannical way. When judiciary is not independent from the legislature, there would be no freedoms. Because in such a case, the trial could act like the legislature and a key control would emerge. If it will be combined in executive body, the judge may apply to violence. If the same individual or the branch, either the nobility or an individual, are to perform distinct powers simultaneously, these are, power to make laws, to implement public decisions and to handle judiciary issues, everything would come to an end. In Turkey, where these three powers are united in the Sultan's person, the subjects groan under the most dreadful oppression.

As a result of contributions of Montesquieu, one of the most important thinkers of the Enlightenment Age in which reason came to the fore, the separation of powers advanced significantly, and the judiciary emerged as an independent authority, as it does today. When we look at the ideas of mixed governance or separation of powers that we have seen since antic times, it is clearly understood how great Montesquieu's contribution to the theory was. The executive power was united with Montesquieu's contributions and became an effective mechanism in both domestic and foreign affairs. He also separated the judiciary power from these two powers, namely executive and legislative, by stating that the administration that would emerge if the judiciary power were united with the legislative and executive powers would be oppressive. Montesquieu became one of the thinkers at the forefront of democracy and separation of powers with his contributions.

Waldron is among the thinkers who made significant contributions to the theory. One of the most important thinkers of the modern times, Waldron (2013, 433-440), discussed that the separation of powers is commonly associated or identified with two other principles, that are, division of powers, checks and balances. Those principles are briefly described by Waldron as follows:

- **The division of powers:** Avoiding concentration of excessive powers in any one person, group or agency.
- **The checks and balances:** This means that the exercise of power by each branch of government must be balanced and checked by the exercise of power and authority by the other branches.
- **The separation of powers:** Implies that there must be a qualitative separation of the different functions of government—legislation, adjudication, and executive administration.

The essence of the principle was discussed by Vile. His main objective was to develop a pure doctrine of the separation of powers. Thus, Vile examined pure doctrine in three parts, which can be summarized as follows (1998, 15-25):

1) **The First Element of the Doctrine:** Firstly, it is necessary to have autonomous centres of power within the government as a means of internal check to the government. Establishing that centres of power require the separation of agencies (units) in the first place. Once the separate agencies are established and the autonomous centres within the government created, an institutional interest will develop which will generate limitations on a single person or group that are influencing and dominating the whole government. Although the individuals of those agencies are the same, there could be differences about the interest within the government. This is because different agencies require different procedures which will provide different values and constraints in the agency. Separating the agencies will provide institutional interest, unique tradition and special colleagues and increase of professionalism which all in all may provide internal checks. Even if functions are shared among themselves, separate institutions composed of different people can represent different groups in community and thus establish the fundamentals for oversight of activities of each.

2) **The Second Element of the Doctrine:** This part of the doctrine is about the functional separation of the power. It is thought that all governmental authority can be classified as legislative, executive, and judicial functions. Thus, second element of the doctrine is about the functional separation of the power.

3) **The Third Element of the Doctrine:** The Pure doctrine here suggests that separation of units and functions are not sufficient. If freedom is to be secured, these functions must be divided into different hands. This means the separation of individuals. It has been recommended those branches of the state consist of separate groups of people whose memberships do not overlap among those branches. It is perfectly possible to have different government agencies performing different functions but governed by the same people or one individual.

However, this separation should not mean isolation of state organs from each other. Hamilton, Jay, & Madison, (2001, 255-260) stated on this issue that it is necessity to separate these state branches as the power has rapist nature that corrupts people. However, this should not mean a total isolation of the powers. To establish a free government and constitutional system, it is necessary that the powers be sufficiently interconnected and harmonious while each power having controlled influence over the others.

## **2.2. Origins of Presidential System**

Only a few governmental systems in the history of politics were attracted the attention of academicians and politicians as much as the presidential system. With its distinctive feature of sharp separation of powers between legislation and executive body, the presidential system is the cornerstone of modern governance and shapes the political systems of many countries around the world. To understand the essence and importance of the presidential system, it is necessary to trace its roots and understand its characteristics.

The system, where the president is relatively more powerful and has features, such as establishing the government, appointing senior civilian administrators, representing the people and being elected by the people, can provide stability in countries where establishment of continues stability is problematic.

Many countries, from Latin America to Africa, from Asia to Eastern Europe, have adopted different versions of the presidential system, each adapting the system to their own historical, cultural and institutional conditions. The widespread adoption of the system also shows that the system can be adapted to different countries with different

political conditions, history and culture. Unlike its parliamentary counterpart, where executive power is intertwined with the legislative branch, the presidential system encourages a clear boundary between the executive and legislative bodies of the country.

State consists of legislative, executive and judicial bodies. The relationship between these organs in state may take different forms. These differences lead to the formation of different government models. It is seen that sometimes the powers come together, revealing the unity of powers, and sometimes they remain separate, causing the separation of powers (Özer, 2005, cited by Tan, 2021, 5-10).

Separation of powers can occur in two different ways: sharply or softly. Presidential system is an example to the first way of separation of powers, where powers are sharply separated and represented by different authorities. Parliamentary system on the other hand would be an example to the soft separation of powers where the legislative and executive organs are more interconnected with each other (Genç, 2024, 3-10).

The presidential system can be understood as a direct response to the needs and desires of the Founding Fathers. After the War of Independence, the United States opposed British rule and looked for a new government system in which freedom, democracy and separation of powers would be included. Thus, the presidential system was born, where president serves as the head of the executive and representative of national unity.

Origins of the presidential system therefore goes back to the “Founding Fathers” of the USA. In the 18th century in America, system was accepted as a system born from the human mind. Presidential system was born as a reaction and criticism to the condition of parliamentary model in the end of the 18<sup>th</sup> century. Thus, administration system of England, was criticized and a new system was born as a reaction. It is a federal government structure in which the President and Congress are elected separately, the parliament was formed as dual, and the president is elected by the second electoral college. However, the system works as long as the three branches of the state meet on common ground, otherwise problems may occur (Fendoğlu, 2016, 40-42).

The system differs from other state systems due to its many distinct features. These features generally relate to the transfer of executive power to single individual.

This concentration does not mean that system is more authoritarian or anti-democratic. The government established and directed by the president is constantly monitored and balanced by the parliament.

In this context, Sartori (1997,80-100) states that in this system, the executive structure is strictly separate from legislative body. President serves as the leader of country and government in the presidential system. Elections for presidency and legislation is independent from each other, meaning people will directly elect their own leader. Additionally, the president often exercises significant control over the executive bureaucracy. This separation of powers between the organs is a defining feature of the presidential system.

Election under this administration is different than parliamentary system of governance. In the parliamentary system, presidents chosen by and from the TGNA and also the assembly could have deputies in the Cabinets of the Ministers in the executive branch. Mainwaring (1993), discusses that president will be elected popularly for a fixed time period in this system, thus legislative body of the state cannot determine the executive power or cannot force president to resign as a result mechanisms such as vote of no-confidence.

Shugart & Mainwaring, (1997), furthermore discussed that, president will be elected directly by the public which cores the legitimacy of the president to the people itself. Authors have discussed that this generates independence of president from the legislature branch. Also, system brings clear separation of powers between those bodies because both of them elected independently from each other. Authors also focused on the aspect of winner takes all elections. Meaning the winner that receives the most votes wins the presidency. This system is against proportional representation systems commonly adopted by parliamentary democracies.

Given that the executive body is headed by a single person, presidential system necessitates a dynamic, energetic and active president. Far from being in a symbolic position, the president is a significant political figure. People elect their own president; thereby executive body derive the legitimacy directly from the people. For these reasons above, Hamilton, Jay, & Madison (2001, 360-375) advocated an independent, strong, and

energetic executive power. According to them, executive authority will be vested in a single person, who will be elected directly by the people to serve a fixed term which is four years. President will have significant powers in this system. including the authority to return a bill to Congress for reconsideration. If the bill is to be approved, it must receive a two thirds majority in both houses.

For these reasons above, key features of this system are as follows:

- People directly elect their president, therefore legitimacy directly based to the people of the country. Pride and mistakes attributed to the president.
- Executive power belongs to the president therefore the president is equipped with serious executive power such as appointing high-level government officials and to form the government of the country.
- President possesses the authority to veto legislation, thereby providing a system of check and balance while performing executive duties.
- The forces are sharply separated from each other. President serves during a fixed time period and president will not be dismissed from the post by the legislature before the end of his/her term as a result of mechanisms such as vote of no confidence.
- Finally, winner takes all in the presidential system. Meaning is that the opposition who lost the presidency will be excluded from the executive activities for the entire fixed-term period.

Genç (2024, 65-75, quoted from Gözler, 2011), discussed that this system strictly adopts the separation of state powers by centralizing authority towards a single branch. This strengthens administration and allows the administration to run faster and more consistently. A functional feature of the presidential system is its capacity to ensure continuity, as both the assembly and government are elected for a fixed term and cannot terminate each other before the end of their terms. This facilitates more efficient administration and greater stability. Under this system, direct election of the president enables public to more clearly identify the accountable individual responsible for the mistakes or shortcomings in governance.

Therefore, president can ensure that the state develops more quickly by implementing executive decisions for the good of the state. However, even though the speed that the presidential system offers can affect the country in a positive way, it should be mentioned that it might not be the case always. If we imagine a society governed by a president who makes and implements wrong decisions quickly, we can say that the presidential system that provides quick decision-making process would negatively affect the governance system of that society.

Presidential system eliminates the possibility of coalition governments which lead to crises due to internal disagreements in the executive body even in cases where both parties get along well with each other and both parties come from the same political tendency. By avoiding coalition governments, the presidential system reduces the potential for such conflicts and ensure a more stable executive branch. Regarding this issue, Genç (2024, 65-75 quoting Kuzu, 2011), states that unlike the parliamentary system, the presidential administration does not allow assembly and executive organs to be intertwined and eliminates the formation of coalition governments, concentrating the executive in the single hands. It therefore provides more effective governments.

A system in which a two-headed administration style in government is prevented and responsibilities are concentrated in a single person is more effective in eliminating arguments and disagreements in the administration Hamilton, Jay, & Madison (2001, 360-370), therefore discussed on this issue that, in any joint venture or organization involving more than one person, the potential for conflict always arises. If these conflicts extend to the highest levels of government, they can disrupt or hinder important government initiatives in times of crisis.

The word if is frequently used in situations related to the presidential system. Since the president in an important position and effect the country so much that, country will run better only if the president makes right decision. Moreover, the country will be positively affected by the power that the presidential system provides to president only if president appoints the capable people to right positions with the merit criteria. The reason for using this word is, of course, related with the president's solid position in the presidential system. If powers of president are not balanced by other branches, executive body may potentially grasp the powers of both the legislative and judicial bodies, thereby

undermine the balance of power. This imbalance, which is often viewed as the greatest disadvantage of the presidential system, could lead the country to a undemocratical administration,

Mainwaring (1993, 199-205), argued that this system is less suitable for democracy in this regard. Only 4 of the 31 stable democracies (the author means democracies that had run at least for 25 years with no interruption) adopted the presidential system; USA, Colombia, Costa Rica, Venezuela. Mainwaring discussed in depth why the presidential system is less conducive to establishing a stable democracy. First of all, it is relatively difficult to manage major crises in a presidential system. Because the system offers less flexibility in crisis situations. There is no mechanism or means to remove an unpopular president from the office who lost support in the legislature.

The fact that the president will be in office for a certain period and there is no way to take him/her out of the office, that the winner literally wins everything thanks to nature of this system and other parties, oppositions do not take part in the government as it is in the parliamentary system, can be very serious disadvantages of the presidential system. Keeping opponents out of the government for a fixed period of 4 to 6 years can cause serious problems in cases where the government loses the trust of parliament and the public. Mainwaring (1993, 205-210), gave a perfect example to this situation from Chile. During 1973 in Chile, it was risky for opponents of the government to let Allende to complete the fixed term which would have resulted in catastrophe for the country. Given that fear, opposition in the country had incentives to be supporters of a coup against the president which seemed as the only way to replace the president.

Cheibub (2006, 15-20), discussed that, only the US stayed in the path of democracy among the presidential systems. Latin American countries where this administration generally implemented, located in the region where there is the highest level of regime instability. However, main problem is that, presidential system tends to exist in countries dominated by military dictatorships. In these countries, any kind of administration system more likely to perish.

Linz (1990, 50-60), one of the most influential opponents of presidential system, focused on the threats that presidential system may cause. Concentrated on a paradox which is present in that system. It is claimed that the main aim of system is providing strong, stable and legitimate executive body. The president, who leads this executive branch, is expected to act in line with the will of the people as a unifying figure against different interests in the legislative body. On the other hand, there is a deep suspicion of concentrated and potentially arbitrary authority in constitutions that adopt the presidential system. As a safeguard against potential abuse of power, presidential constitutions often include provisions prohibiting re-election. The aim of that restriction is to prevent too much power from accumulating in a single person for too long. The paradox is that if consolidating too much power in a one person would threaten freedoms and undermine the separation of powers, then why would people support this type of government system? Another disadvantage of the presidential system, according to Linz, is the zero-sum structure of presidential elections, where the winner wins everything and the opposition is completely taken out of the executive branch. Within this situation, the opposition will sharply be excluded from the administration for the entire period, which usually lasts four or five years. Linz claimed that this situation would lead to polarization within the country.

## **CHAPTER 3**

### **3.1. Background of the Constitutional Changes**

Presidential System came to the Republic of Türkiye not as a sudden decision, but as a result of deep-rooted memories arising from military coups, military memorandums, economic crises, terrorist activities and anarchy that remain in the memory of the Turkish people regarding the parliamentary system. With political instability contributing to challenges, especially since the 1960s, the presidential system has stood as a system that can provide solutions to these problems. Coup attempt in 2016 definitely triggered system change. Therefore, new presidential system emerged as a search for a new, strong management system that would provide a solution to the political instability within the country.

As a matter of fact, the roots of the reasons for the transition to the new system date back to the 1960s, when the military took the government as a result of the coup for the first time in the Republic's history. Democratic Party, which was overthrown by Turkish Army at that time, actually revealed its policy with discourses of freedom and democracy. However, as Gençalp, (2017, 330-335) discussed, the point reached at the end of ten years reign of Democrat Party led by Adnan Menderes made the press law extremely authoritarian, filed lawsuits against many journalists and press members, imposed censorship to press organizations and closed these organizations. As Yüksel (2022, 945-946) discussed, antidemocratic practices implemented by the party that adopted democracy as its election slogan and chose its name as the Democratic Party, in the final years of its rule paved the way to the first military intervention in the Republic of Türkiye. One of such authoritarian implementations was the establishment of the Investigation Commission which consisted of 15 deputies from Democratic Party side. (Atılğan, Saraçoğlu, & Uslu, 2015, quoted by Gençalp, 2017, 335-340) argued that, the commission granted with wide range of powers, including the powers of prosecutor's interrogation judges and magistrates. The commission can impose a publication ban,

close printing houses, and stop all kinds of political actions and work. It is not possible to talk about democracy in such an environment.

In 1971, the army sent a memorandum to Prime Minister Süleyman Demirel due to the anarchist situation, which was considered as the second intervention in the civilian administration in Türkiye. The memorandum highlighted the country's economic turmoil and growing public disorder, and it was requested to establish a non-partisan, strong and reliable government based on Kemalist principles, operating within democratic framework to address the crisis. The memorandum warned that if the measures were not implemented, the Turkish Army is determined to take over the direct control of the administration (Milliyet, 1971).

After the memorandum, the Parliament was not dissolved and the constitution was not suspended but, military was successful to dissolve government because Demirel resigned. Also, parliament formed a new non-partisan government as the Turkish military demanded (Yüksel, 2022, 945-950). The military dominance in the assembly continued till the 1973 general elections. Public disorder and terror did not stop but increased and political instabilities were even worsened in the following years. Conflicts between far-right and left-wingers, the religious issues known as Alevi-Sunni tensions, and political instability were making the situation even worse. Yüksel, (2022, 948-950) discussed that major provocations occurred in Malatya in April followed by Çorum and Elazığ in May, and Sivas in September. These provocations caused deaths of many people and widespread destruction of buildings. The most severe consequences were the Kahramanmaraş events that took place on 22-26 December 1978. It resulted in 107 deaths, 205 injuries, and the destruction of nearly 500 buildings. The violence during this period was a complete massacre.

Many reasons can be given for this unrest and unfortunate massacre in Türkiye. One of the biggest reasons for this can be considered as political instability and deadlocks arising from the administration system. Fendoğlu (2012, 49-50) highlighted that 12 governments had changed between the years 1970 and 1980, with the life expectancy of each government being less than 1 year.

Not only forming the government but also election of the president in parliament was sometimes quite problematic which was lowering the instability in Türkiye. Aydın & Taşkın, (2017 quoted by Keskin & Gülsemin, 2020, 703-705) discussed the election crises of the president in this regard. Right before the 1980 coup in Türkiye, despite more than a hundred rounds of voting, parliament failed to elect president. This failure lowered the trust of Turkish Military in politicians significantly and served as a crucial reason for military to conduct a coup.

During the period between 1991 and 2002, Türkiye was ruled by coalition governments for 11 years. This period is known for its severe economic crises and instability deriving mostly from unstable governance. Coalition governments formed during this period often ended shortly after their establishment, resulting in ineffective administration. As Çakır (2020, 20-23) reminded us 7 coalition governments were formed within 11 years. For instance, the coalition between ANAP-DYP parties, established by Tansu Çiller lasted only for 10 days.

Between the 1960s and 2002, till the AKP came to power, Türkiye witnessed numerous social events, disasters, or incidents that could be labelled as massacres, terrorism, violent actions between right-wing and left-wing groups, religious violence, and coalition governments that were deemed 'inadequate' or 'weak' for not being able to keep under control these situations. Therefore, it has been suggested that the parliamentary system should be replaced, coalition governments should come to an end, conflicts between the PM and the president should cease, and new system should be formed where the executive will be administered by a single person.

Presidential system supported several times by significant politicians such as Turgut Özal and Süleyman Demirel. Turgut Özal stated in 1993 on a TV program the following:

“I say presidential system that is close to USA-type. I believe, ministers should be appointed out of parliament. I’ve seen in my 6-year-old parliamentary life that there are always problems between ministers and parliamentarians, because both of them have election concerns. Furthermore, there is no oversight under the current parliamentary system. Because whether it's a coalition government or a single party government, it dominates the parliament. Our parliament cannot exercise control authority because the government is dominant, and even today, a coalition

government dominates the parliament. But in presidential administration, there will be a clear separation of powers. Americans call this as check and balance.”<sup>11</sup>

Later on, Süleyman Demirel who cannot be forgotten in the history of the country supported presidential system as well. He said in a conference the following:

“One of the unfulfilled desires within me is for Türkiye to elect its own president. I actually wished we would have implemented the presidential system. This remains an unfulfilled desire within me that we couldn't achieve it. The state and the country are vast, and the people are highly dynamic therefore it is hard to govern. The failure to govern the country could be attributed to the inabilities of the governments, but generally, we need to make changes in the system.”<sup>12</sup>

Supports regarding presidential system continued with Recep Tayyip Erdoğan in the following years. In 2011, Erdoğan expressed his support for the Presidential system on a TV program called "32nd Day."<sup>13</sup> Then, as the 2015 elections approached, he reiterated his support for the presidential system, stating that a Turkish-style presidential system would be possible. He emphasized that this was not just a system change but also a matter of survival for the Republic of Türkiye.<sup>14</sup>

Demirhan, Aslan and Alkış (2016) argued that the AKP took the first concrete step by presenting the constitutional amendment proposal regarding the presidential system to Parliament in 2012. Presidential system, which was also on Türkiye's political agenda after the 2011 elections, was used by the AKP during the 2015 election campaign. The President supported the system change in rallies and requested enough members of parliament from the public. The opposition continued its election campaign against this. After the election results showed a decrease in AKP's side, change in the system was removed from the agenda. Since the government could not be formed within the period specified in the constitution after the elections, the President decided to hold new

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<sup>11</sup> Turgut Özal's interview with Mehmet Ali Birand on TV Show "32. Gün" - <https://www.youtube.com/watch?v=YQvs1YLdiOo> – Access Date: 24.04.2024

<sup>12</sup> Süleyman Demirel speaks in a conference: <https://www.youtube.com/watch?v=zHZf-qyWwMc> – Access Date: 02.03.2024

<sup>13</sup> Erdoğan's view on Presidential System. <https://www.youtube.com/watch?v=opGjnBaGQfI> – Access Date: 01.03.2024

<sup>14</sup> Erdoğan's speech regarding presidential system during his rally for elections. <https://www.dailymotion.com/video/x2i9g6n> - Access Date: 01.03.2024

elections. On November 1, 2015, the presidential system came back to the agenda with the AKP receiving approximately 50 percent of the votes.

The presidential system proposed by the AKP was being blocked by the opposition, and thus the system change was not happening. The attempt by the military in 2016 deeply affected both the people and the political perspective, removing the obstacles towards the system change. However, the biggest obstacle to the change was the presidential elections as per the referendum held in 2014. With the change, president can now be elected by directly people, not appointed by the parliament. Thus, Türkiye officially departed from the parliamentary system for the first time. Erdogan, regarding the presidential system, said the following in a speech in 2015:

"Indeed, election of the President by the people is the first step taken in this regard. Now is the time to take this step further and transition to a system consisting of a strong president, strong parliament and strong local governments, in line with our country's state tradition and the needs of our nation."

However, the decision to direct election of president brought with it some problems. It was anticipated that disagreements would arise between the parts of execution. On this issue, Erdoğan stated in another speech that "it is unthinkable that, the president who directly elected by the people should have only symbolic position, isolated from the political sphere."<sup>15</sup>

In this context, MHP (Nationalist Movement Party) leader Bahçeli, prior to coup attempt on January 5, 2016, stated that: "MHP is entirely opposes presidential system and is in favour of strengthening the parliamentary system." However, following the coup attempt, on October 11, 2016, Devlet Bahçeli emphasized that Türkiye was facing a very serious existential crisis. He emphasized the importance of ongoing discussions about the system of government, noted that roles and powers of President-Prime Minister and Cabinet have become blurred. He also noted that Türkiye needed a new social contract and that this need became urgent after July 15th. He underscored that if the AKP had any

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<sup>15</sup> Erdoğan's speech regarding presidential system in 2015. Available here: <https://www.dailymotion.com/video/x3oypyg>. Access Date: 02.01.2024.

preparation for constitutional changes, that preparation should be brought to the parliament. As discussions about the presidential system continued in Türkiye, the coup attempt that occurred in 2016, positively influenced the Nationalist Movement Party leader's stance on the presidential system. Additionally, the MHP leader emphasized that the presidential system is a positive necessity for the country's survival Dertlioğlu (2020, 75-80).

After the MHP leader's speech, a constitutional amendment proposal named "Presidential Government System," prepared by the AKP, was submitted to the parliament. However, as the parliament failed to obtain the required majority, it was taken to a referendum. On April 16, 2017, the referendum resulted in its approval with a vote of 51.4%. Following Bahçeli's statement emphasizing the urgency of transitioning to the system as a matter of national survival, the Presidential elections were brought forward, held alongside elections of parliament in 2018. The AKP, MHP, and the Great Unity Party (BBP) established the People's Alliance and participated in the elections, while the CHP and the İYİ Party established Nation Alliance for the elections. During the president's election, utilizing the alliance method introduced by the presidential system, Erdoğan, won with 52.6% of valid votes in the first round, becoming the first president in new administration and 12<sup>th</sup> President of Türkiye (Börklüoğlu, 2019, quoted by Dertlioğlu, 2020, 75-80).

### **3.2. The Impact of the New System: What Has Changed?**

Following the adoption of the new system, Turkish Constitution changed significantly. In this context, while some of the changed articles were directly related to our subject, some of them were articles that had nothing to do with our research question and no connection with separation of powers. For instance, the change in Article 9, the word "impartial" was also added for the courts that were already stated to be independent. Also, some words were taken out of constitutions such as prime minister or council of ministers. Therefore, under this title, only changes in articles relevant to our subject will be examined, while others will be disregarded as they do not relate with the thesis's purpose.

- **Article 77:** This article regulates the simultaneous elections for the assembly and presidency. Holding these elections on the same day poses significant risks and great dangers for separation of powers. An impartial president who presides over a political party, is in the most powerful position in determining the deputies from that party who will participate in the TGNA elections. This power could undermine the separation of powers and democratic principles could weaken. The reason for this is that election of some MPs with support of president may cause weakened parliamentary oversight over the executive power.

Furthermore, voters who support the president are likely to also vote for parliamentary candidates nominated by the president. This could result in an increased number of deputies in the parliament, nominated by and supported by the president.

Additionally, determining a fixed presidential term of 5 years may also cause problems. If the president loses the support of the people and their representatives during this 5-year period, failure to replace the president may cause unrest within the country. These unrests may evolve into events that will cause deep wounds in the society. Although this system, called the Turkish type, has added the practice of renewing elections to the constitution to solve this situation, it is quite difficult to implement this in practice. Gathering a qualified majority is one of the greatest among these challenges.

- **Article 89:** This article regulates the publication of law vetoed by president.

An absolute majority is required for TGNA to override president's veto and enact law. In practice, this requirement may cause opposition parties to be isolated not only from the government but also from the parliament and legislative process, and the parliament might not carry out legislative activities effectively. Currently, the ruling party AKP has 264 seats in the Assembly, while its supporting parties the MHP and Free Cause Party (Hüdapar), hold 50 and 4 seats bringing the total to 318 seats. This regulation may easily cause the president to veto the bill proposals introduced by MPs from opposition parties who are unable to achieve an absolute majority. As a result, the parliament's effective law-making authority may be eroded, which in turn could weaken the effective implementation of separation of powers.

| Party Name                            | Number of Members |
|---------------------------------------|-------------------|
| Justice and Development Party         | 264               |
| Republican People's Party             | 127               |
| Peoples' Equality and Democracy Party | 57                |
| Nationalist Movement Party            | 50                |
| Good Party                            | 34                |
| Felicity Party                        | 20                |
| Democracy and Progress Party          | 15                |
| Independent Member of Parliament      | 7                 |
| Free Cause Party                      | 4                 |
| Re-Welfare Party                      | 4                 |
| Democrat Party                        | 3                 |
| Workers' Party of Turkey              | 3                 |

**TABLE 1: CURRENT STATUS OF THE SEATS OF ASSEMBLY <sup>16</sup>**

The current distribution of parliamentary seats is given in the table above. This table will help us better understand how the new system affects the separation of powers.

When this table is examined, it is seen that new administration implemented in Turkey has very serious effects on the separation of powers. By constitution, the assembly can renew the elections, thus remove the president out of the office. This can be accomplished, with a three-fifths majority (360 votes) in case of any crisis in the administration. However, the practical applicability of this constitutional provision is jeopardized by today's political structure. The members of parliament from the AKP work under the influence of the president, and other parties supporting AKP, already exceed half of the parliament. In a parliament consisting of 600 members, if you exclude the MPs who supports the ruling party, therefore supports the president, the remaining total number of MPs does not reach 360. Therefore, this authority granted to the parliament

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<sup>16</sup> TBMM.gov – Access date: 01.07.2024

remains only on paper and is practically impossible to implement under the current structure.

When we do not count the MPs from ruling party and the MPs who support AKP in that table, 12 parties remain. Even if the sum of the membership numbers of all these 12 parties does not reach to 360, there is a problem of cooperation that arises even if we imagine that it will reach to 360. It can be said that it is almost impossible for the leaders of 12 parties to meet on common ground with each other. Each party represents a different mentality and social stratum in Türkiye. It is almost impossible for 12 parties to unite and act jointly. Therefore, the method of renewing the elections granted to the parliament in the new system cannot be used in practice by the assembly. In fact, only the president can use this feature in the current situation.

Not only the renewal of elections, but also the legislative branch's primary duty of making laws is under threat. If the party the president leads or is affiliated with obtain the majority in parliament, there is a possibility that the president will use this political party to prevent parliament from enacting laws that the president does not want. If this situation occurs and the numerical majority in parliament comes from the president's party, the views of the opposition parties in parliament may no longer matter and parliament will not be able to enact even laws that the executive does not want. Therefore, this possibility leads to unity of powers instead of enhancing the separation of powers.

- **Article 98:** Assembly exercises its authority to obtain information and control with Parliamentary inquiry, general debate, Parliamentary investigation and written questions.

The situation regarding renewing elections also appears in the regulation regarding the prosecution of vice presidents and ministers for allegedly committing crimes related to their duties. Yet, it is quite difficult to reach the stated numerical majority. The majority required to even discuss opening an investigation against ministers and deputies is an absolute majority. When we look at the current numerical situation of the Assembly, it is observed that the AKP, chaired by President, has 264 deputies, the MHP that supports it has 50 deputies, and the Free Cause Party, which supported the ruling party in 2023 presidential elections, has 4 deputies. Currently, more MPs than the

absolute majority are on the AKP's side. Therefore, even just to demand the investigation of any minister or vice president of the assembly requires the MPs of these parties to act contrary to their position, which is almost impossible and illogical. Therefore, it is practically impossible to try these statesmen in the Supreme Court. In order to have an effective separation of powers, the parliament must be in a position to effectively use the government control mechanisms. The current conditions do not allow parliament to use balancing mechanism effectively. This situation shows us that the separation of powers is damaged under this new system.

Legislature has question, parliamentary inquiry, general debate, vote of confidence, parliamentary investigation before the constitutional change as its ways of control and obtain information. As a result of the change in the constitution, vote of confidence<sup>17</sup>, parliamentary investigation<sup>18</sup> are abolished. Question has changed in its essence. Before the system change, Parliament had authority to ask questions to prime ministers or ministers. However now, legislative branch can ask written questions to deputies or ministers that should be answered in 15 days.

Although it is not included among the supervision mechanisms in the Constitution, the Parliament can oversight the government in different ways as well. Authority to renew the elections can be counted among these different ways. As stated before, the Assembly can end the President's term through renewing the elections. If the TGNA can meet a three-fifths majority, which in another way is equal to 360 deputies, the president will be more cautious in the relations with the parliament. Given that the ruling party of Türkiye currently has 265 seats and the disciplined political party model exists, it does not seem possible for the parliament to activate this mechanism and check the president through renewal of the elections at the moment. However, this does not eliminate the fact that this authority given to the parliament is still there and can be used in case a change in the current structure.

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<sup>17</sup> See Article 99 that points out abolishment of vote of confidence

<sup>18</sup> See Article 100 that points out abolishment of Parliamentary investigation

In addition, the budget law serves as another way of supervising mechanisms of parliaments over the government even though it is not typically classified among supervision mechanisms in the constitution. The president is responsible for submitting the budget proposal to the parliament which has the authority to approve or reject it. Thus, government must present a budget proposal that is also acceptable for the parliament. However, if parliament rejects the budget proposal, a provisional budget law will be prepared. If the provisional budget law cannot also be enacted, the budget of the previous year will be applied increasingly as per the revaluation rate until the new budget law is adopted.<sup>19</sup>

Gözler (2017) criticized this regulation by stating the following: “It cannot be said that there is a true parliament in a state where the executive organ can collect taxes and spend without being subject to the permission from the assembly. A parliament stripped of its budgetary authority is nothing more than a "pseudo-parliament". There is naturally no separation of powers, in a country with such a parliament.”

TGNA can also supervise the president through the laws. Although president is able to issue presidential decrees, it cannot be issued on matters that are stipulated in the Constitution to be exclusively regulated by law. It cannot also be issued on subjects clearly regulated by existing laws. The law has precedence if a conflict between the presidential decrees and law takes place. When the Assembly passes a law on same subject with a presidential decree, that particular decree will be invalid.<sup>20</sup> Therefore, Assembly has the authority to supervise the actions of the president through laws despite it is not stipulated among the supervision ways of the parliament in the constitution.

Another method of the oversight authority of the parliament is the General Discussion. This process allows MPs to discuss the activities of the government and can take necessary steps and actions based on their discussion. A general discussion can be

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<sup>19</sup> Article 161, Constitution of the Türkiye.

<sup>20</sup> Turkish Constitution, Article 104.

requested either by political party groups or by at least twenty members of the parliament.<sup>21</sup>

The parliamentary inquiry is also oversighting mechanism for the assembly. Parliament can obtain information from various institutions such as ministries and local authorities, conduct examinations in these places, and call relevant individuals to provide information.<sup>22</sup>

Supervision, which is one of the most vital aspects of any administration system is briefly in this structure in the new Turkish governance. This structure however further criticized for strengthening the executive against the legislative branch. Gözler, (2016) discussed on this matter that, “there is no balance and oversight mechanism in the president’s relation with legislature, judiciary and the administration. Unconditional and limitless power such as appointment of vice presidents, ministers, high-level public officials, decision for re-election granted to the president without any form of accountability. This kind of unrestricted power does not exist in modern democracies. In USA, president can appoint high-ranking state officials including judges. However, legislature branch, that is the senate, has to approve those appointments.”

Another criticized aspect of the system is towards the qualified majority. The Parliament requires a qualified majority not only for the oversight mechanism to function well but also to effectively use its law-making authority against the veto power of the president. In this context Okşar, (2019) argues that, oversight functions presented as supervisory authority in the constitution are basically unattainable due to the requirement of the qualified majority. In this case, three-fifths of total members of parliament required to renew the elections. Furthermore, to refer president, vice president and ministers to the supreme court for their criminal liabilities, two-thirds of the total members of parliament is necessary. These numerical conditions negatively affect the functional status of the legislature branch and disrupt the balance between organs. Additionally, the absence of president’s political accountability to the legislative branch, existence of the criminal

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<sup>21</sup> Rules of Procedure TGNA, Article 101.

<sup>22</sup> Rules of Procedure of TGNA, Article 104

liability that is challenging to enforce, and the lack of effective oversight mechanism not only for the legislature but also for the judiciary, strengthen the dominance of the executive powers.

**Article 101:** President will directly be elected by people from among Turkish citizens who are over the age of 40, eligible to be a member of parliament and have completed their higher education. President serves for 5 years. President can serve 2 terms at maximum. Parties who alone or together received 5% of the valid votes in the last general elections can nominate candidates for the Presidency. Furthermore, political party groups, and 100,000 people can nominate candidate for presidency.

President who leads a party, instead of a neutral president, causes discussions. Phrase pointing out that “the elected President’s connection with his/her political party will be severed.” is abolished. Thus, president of Türkiye allowed to be a member or leader of a party as he/she leads the executive branch of the country.

President serves for 5 years and establishes the government, and in this government, there is no room for opposition or those who do not think the same as the president, unless the president wishes to do so. Thus, the winner-takes-all situation would impact the country’s political landscape. This situation may negatively affect the country on some issues. One of these is related to the principle of the democracy. The absence of politicians from opposition parties in the formation of the government can be considered negative for the sake of the democracy. But it also has its advantages. Removing dissenting ideas from executive power that would potentially conflict with the president could increase the country’s stability and cause a positive impact. However, if a person presides uninterruptedly for a period of 5 or 10 years and the party that is being led by the president obtain the absolute majority in the parliament, democracy and separation of powers would be compromised. While the president presides the executive power as the president, it could be discussed that the president would also control the parliament through the deputies nominated by the president. A type of government may emerge as a result of new administration system in which principle of the separation of powers will not be possible. In this concept, Aslan, (2015, 16-18) argues that, in the parliamentary system, the government is formed through processes within the assembly after the elections, which leads to uncertainty among the public about who exactly will be chosen as

president. This situation causes uncertainty in governance. In the presidential administration system, on the contrary, the elections for the executive are held separately from parliamentary elections, that means people directly elect their president. This avoids the uncertainty experienced in the parliamentary system. Thus, from the beginning, public clearly know for whom they are voting for.

**Article 104:** President is the head of state who holds executive authority and represents Türkiye and unity of the Turkish Nation. President conveys messages to the Parliament regarding both domestic and foreign policies. In addition, the President has the authority to appoint and dismiss vice presidents and ministers and senior public officials, and can regulate their appointments through presidential decrees. The President can send laws back to the Parliament for reconsideration and issue presidential decrees on matters related to executive authority.

Crucial point is the regulation regarding the president's appointment of senior civilian administrators. In this regulation, first of all, the answer to the question of who is the senior manager is not given. Therefore, the abuse of this regulation and its interpretation much more broadly than it should be may allow many more institutions to be managed by managers directly appointed by president.

Also, it is under president's authority to regulate the procedures and principles regarding the appointment of senior civil administrators by decree. I find this regulation regrettable for Turkish Democracy. Because the lack of a strong influence of the Parliament in the appointment of high-level civilian administrators who will manage the entire Turkish bureaucracy can be evaluated negatively in terms of Turkish Democracy. It is inevitable that this regulation will have serious effects on the Turkish public administration as well as Turkish Democracy.

We see that the president uses the authority to appoint senior civilian administrators very effectively in the new system. Since the transition to the new administration, governors of the Central Bank of the Republic of Turkey (CBRT), one of the most important institutions in terms of the country's economic policies- have changed almost every year. In order to better understand how the president uses the authority to appoint senior civilian administrators that the president gained as a result of shift towards

new system, following tables show terms of office of the Central Bank Governors before and after presidential system, and average number of years that CBRT governors served before this shift to presidential system and how this term changed after transition to new administration. CBRT governors before transition to presidential system are as follows:

| <b>President of Central Bank</b> | <b>Year Appointed</b> | <b>Year Term Ended</b> | <b>Term Duration (years)</b> |
|----------------------------------|-----------------------|------------------------|------------------------------|
| <b>Selahattin Çam</b>            | 1931                  | 1938                   | <b>7</b>                     |
| <b>A. Kemal Zaim Sunel</b>       | 1938                  | 1949                   | <b>11</b>                    |
| <b>Mehmet Sadi Bekter</b>        | 1949                  | 1950                   | <b>1</b>                     |
| <b>Osman Nuri Göver</b>          | 1951                  | 1953                   | <b>2</b>                     |
| <b>Mustafa Nail Gidel</b>        | 1953                  | 1960                   | <b>7</b>                     |
| <b>Memduh Aytür</b>              | 1960                  | 1960                   | <b>0</b>                     |
| <b>İbrahim Münir Mostar</b>      | 1960                  | 1962                   | <b>2</b>                     |
| <b>Ziyaettin Kayla</b>           | 1963                  | 1966                   | <b>3</b>                     |
| <b>M. Naim Talu</b>              | 1967                  | 1971                   | <b>4</b>                     |
| <b>Memduh Güpgüpoğlu</b>         | 1972                  | 1975                   | <b>3</b>                     |
| <b>Cafer Tayyar Sadıklar</b>     | 1976                  | 1978                   | <b>2</b>                     |
| <b>İ. Hakkı Aydınöğlu</b>        | 1979                  | 1981                   | <b>2</b>                     |
| <b>Osman Şıklar</b>              | 1981                  | 1984                   | <b>3</b>                     |
| <b>Yavuz Canevi</b>              | 1984                  | 1986                   | <b>2</b>                     |
| <b>Dr. Rüşdü Saracoğlu</b>       | 1987                  | 1993                   | <b>6</b>                     |
| <b>Dr. N. Bülent Gültekin</b>    | 1993                  | 1994                   | <b>1</b>                     |
| <b>Ş. Yaman Törüner</b>          | 1994                  | 1995                   | <b>1</b>                     |
| <b>Gazi Erçel</b>                | 1996                  | 2001                   | <b>5</b>                     |
| <b>N. Süreyya Serdengeçti</b>    | 2001                  | 2006                   | <b>5</b>                     |

|                             |             |      |          |
|-----------------------------|-------------|------|----------|
| <b>Durmuş Yılmaz</b>        | 2006        | 2011 | <b>5</b> |
| <b>Doç. Dr. Erdem Başçı</b> | 2011        | 2016 | <b>5</b> |
| <b>Sum</b>                  | <b>3,66</b> |      |          |

**TABLE 1: BEFORE TRANSITION TO PRESIDENTIAL SYSTEM**<sup>23</sup>

With Turkey's departure from the parliamentary system and transition towards Turkish-Style system, there have been 6 changes in the presidency of the Central Bank. These changes are as follows:

| <b>President of Central Bank</b> | <b>Year Appointed</b> | <b>Year Term Ended</b> | <b>Term Duration (years)</b> |
|----------------------------------|-----------------------|------------------------|------------------------------|
| <b>Murat Çetinkaya</b>           | 2016                  | 2019                   | <b>3</b>                     |
| <b>Murat Uysal</b>               | 2019                  | 2020                   | <b>1</b>                     |
| <b>Naci Ağbal</b>                | 2020                  | 2021                   | <b>1</b>                     |
| <b>Prof. Dr. Şahap Kavcıoğlu</b> | 2021                  | 2023                   | <b>2</b>                     |
| <b>Dr. Hafize Gaye Erkan</b>     | 2023                  | 2024                   | <b>1</b>                     |
| <b>Dr. Fatih Karahan</b>         | 2024                  | Currently Serving      | <b>1</b>                     |
| <b>Sum</b>                       | <b>1,5</b>            |                        |                              |

**TABLE 2: AFTER TRANSITION TO PRESIDENTIAL SYSTEM**<sup>24</sup>

Before the shift to new administration system in Türkiye, average term of office of the CBRT governor was 3.5 years. Since the shift towards presidential system, this term of office of the central bank has decreased to 1.5 years. This significant reduction in the term of office of the CBRT significantly affects Turkey's economic policies. The independence and reliability of an institution whose president is replaced by the executive branch approximately every year is also at risk. While changing the president can provide

<sup>23</sup> [www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Banka+Hakkinda/Tarihce/Baskanlar](http://www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Banka+Hakkinda/Tarihce/Baskanlar). Access Date: 05.06.2024.

<sup>24</sup> [www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Banka+Hakkinda/Tarihce/Baskanlar](http://www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Banka+Hakkinda/Tarihce/Baskanlar). Access Date: 05.06.2024.

more effective governance, it can also cause economic policies to fail to be implemented effectively.

Moreover, dismissal of CBRT governors in every 1.5 years on average by the executive power can also mean that the Central Bank might be functioning under serious influence by the executive power. In order to prevent this situation, it would be more appropriate to appoint the Central Bank governor for a fixed term and prohibit the dismissal of its governor before the end of this term. In addition, it is a wrong practice for the governor of the CBRT, one of the most important institutions in terms of the economy in Türkiye, to be appointed and dismissed directly by the president. It would be more appropriate for the TGNA, which is formed by the representatives of the people, to approve the person appointed by the president, so that a person who is directly supported by the people's representatives can govern the institution. The legislative power should test the person appointed by the president and question whether that person is qualified enough for the position. In this way, the knowledge level of the governor appointed to the position will be measured by both the president and the legislature bodies, creating a more comprehensive evaluation process.

The state administration should avoid hasty decisions. This is because decisions taken too quickly are more likely to result in potential errors in appointments. Implementing measures to slow down the appointment procedures can help reduce the influence of the executive power on CBRT. Thus, executive will first have to compromise with the legislative power and will have to think twice before dismissing the CBRT president. This situation will lead to the formation of more effective economic policies and an increased trust in the CBRT both domestically and in internationally.

To provide better context on this issue, it is insightful to consider a statement of President Recep Tayyip Erdoğan regarding the presidential system and the CBRT governor. President had said following about the presidential system and Central Bank governor:

“I always say that only solution is to lower the interest rate. Inflation will also decrease as interest rate decreases. When this happens, growth will accelerate. We gained the authority to dismiss the Central Bank when this system changed. Thus, we dismissed the previous head of the Central Bank because he wasn't listening, and we continued on our way with our new

friend. And we said that, we are going to reduce interest rates. Because interest is the biggest oppression in the development of a country, it stops investments, employment, production, eliminates your competitiveness, and hinders your growth. Now, when these steps were taken and the atmosphere changed, look at what happened, we brought inflation to single digits. And we made the exchange rate relatively stable.”<sup>25</sup>

The person whom the President referred to as “a new friend” and appointed as the head of the Central Bank was Murat Uysal. President of central bank mentioned in that speech and was dismissed was Murat Çetinkaya. The interest rates during the presidency periods of Murat Çetinkaya and Murat Uysal were as follows.

#### **CBRT Interest Rates Overnight (O/N)**

| <b>Date</b>       | <b>Barrowing Rate</b> | <b>Lending Rate</b> |
|-------------------|-----------------------|---------------------|
| <b>25.01.2017</b> | 7.25                  | <b>9.25</b>         |
| <b>1.06.2018</b>  | 15.00                 | <b>16.50</b>        |
| <b>8.06.2018</b>  | 16.25                 | <b>19.25</b>        |
| <b>14.09.2018</b> | 22.50                 | <b>24.00</b>        |
| <b>21.09.2018</b> | 22.50                 | <b>25.50</b>        |

**TABLE 3: DURING MURAT ÇETINKAYA’S PRESIDENCY<sup>26</sup>**

We observe an increase in the interest rates after 2017 which was criticized by the president. After his dismissal from the position, Murat Uysal, whom the president called as a “new friend” was appointed in his place. Interest rates in the Murat Uysal’s term are as follows:

#### **CBRT Interest Rates Overnight (O/N)**

<sup>25</sup> Erdoğan’s speech video version: <https://www.dailymotion.com/video/x7nlrpt> - Access Date: 05.06.2024  
– Written version: <https://www.tccb.gov.tr/konusmalar/353/109531/ak-parti-genisletilmis-il-baskanlari-toplantisinda-yaptiklari-konusma>, Date of the speech: 05.11.2019 - Access Date: 05.06.2024

<sup>26</sup> [www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Temel+Faaliyetler/Para+Politikasi/Merkez+Bankasi+Faiz+Oranlari/faiz-oranlari](http://www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Temel+Faaliyetler/Para+Politikasi/Merkez+Bankasi+Faiz+Oranlari/faiz-oranlari). – Access Date: 05.04.2024.

| Date       | Barrowing Rate | Lending Rate |
|------------|----------------|--------------|
| 26.07.2019 | 18.25          | 21.25        |
| 13.09.2019 | 15.00          | 18.00        |
| 25.10.2019 | 12.5           | 15.50        |
| 13.12.2019 | 10.50          | 13.50        |
| 17.01.2020 | 9.75           | 12.75        |
| 20.02.2020 | 9.25           | 12.25        |
| 18.03.2020 | 8.25           | 11.25        |
| 23.04.2020 | 7.25           | 10.25        |
| 22.05.2020 | 6.75           | 9.75         |
| 25.09.2020 | 8.75           | 11.75        |

TABLE 4 DURING MURAT UYSAL'S PRESIDENCY <sup>27</sup>

President Erdoğan's speech and subsequent official indicators suggest that interest rates have fallen significantly under the newly appointed governor, which is in line with the president's statements. This suggests that the Central Bank is acting on the executive branch's directives rather than operating independently of it. My research shows that the executive branch has significantly increased its influence over the Central Bank. This influence facilitated by the president's authority to appoint senior civilian administrators. As a result, it is difficult to argue that the Central Bank operates independently or formulates rational economic policies without the influence of the executive branch.

Çığman (2021, 25-30) discussed that, given that both the criteria for appointments and the process of making appointments are determined by the president through

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<sup>27</sup> [www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Temel+Faaliyetler/Para+Politikasi/Merkez+Bankasi+Faiz+Oranlari/faiz-oranlari](http://www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Temel+Faaliyetler/Para+Politikasi/Merkez+Bankasi+Faiz+Oranlari/faiz-oranlari). – Access Date: 05.05.2024.

presidential decrees, the criteria for appointments could continuously change depending on the individual being selected. Therefore, this regulation could lead the system into not only to partisan appointments but also to all forms of favouritism. Considering the existence of a conflictual political culture and the absence of constitutional criteria for determining which positions are considered high-level public positions within the system, it would not be surprising to witness the exploitation of this constitutional gap.

Another important change is that the president can issue decrees on matters related to presidential authority. However, these decrees cannot be issued on following subjects:

- The fundamental rights
- Individual rights and duties
- Political rights and duties
- Matters which were foreseen to be regulated exclusively by law in the constitution.
- Matters which were explicitly regulated by law.

Therefore, president's authority to issue presidential decrees is important but limited. It was also emphasized that in the event of a conflict between presidential decree and existing laws, laws take precedence. In addition, if the TGNA enacts a law on the same subject, presidential decree becomes invalid. Apart from this, president has the authority to address the legislature regarding country's domestic and foreign policy. This change may result in executive control over the legislative body, potentially undermining separation of powers. Under this system, president assumes dual role as both the head of government and leader of a political party. Giving official message to the parliament could increase the government's influence over the assembly, potentially and undermine the separation of powers. The executive branch's potential influence over the legislature would be even stronger if the majority of the parliament consisted of deputies from the party that is being led by president.

**Article 105:** Absolute majority of the assembly may request an investigation against the president for allegedly committing a crime.

This article, which regulates president's liability changed significantly. Before the amendment, the president could only be tried for treason. In the current structure,

president's duties can be terminated by assembly in two ways, which can be considered as different ways of checks on the government. The first is through the renewal of elections as previously mentioned. The second way is related to the president's criminal liability. Parliament may request an investigation with its absolute majority, claiming that president has committed a crime. This will trigger the mechanism to take the president out of the office. In case certain conditions are reached, the president's term will end with judicial decision of the constitutional court. Investigation can start with the secret ballot of three-fifths of the TGNA, thus the TGNA may refer the president to the constitutional court with the secret ballot of two-thirds of the majority following the investigation. The president's term will end with the decision of the constitutional court.<sup>28</sup> If the AKP deputies and the parties supporting the AKP in the assembly are not taken into account, the total number of deputies of the other 12 political parties cannot reach an absolute majority in the Parliament. Apart from these, even if all parties against the AKP unite and demand the referral of the president to the constitutional court, this will not happen in the current structure because the numerical conditions are not met. Therefore, under the current situation, the only way for assembly to use this power granted by the constitution is for the MPs of the party established and directed by the President to vote against the president and for all other parties to unite. This situation is even unimaginable. Thus, this authority granted to the parliament is actually an authority that is impossible to be used in the current conditions.

**Article 106:** In this article, deputies of president, acting on the behalf of president and ministers and their liabilities are regulated. Before the amendment, the authority to exercise presidential powers when the president was unable to govern for any reason rested with the head of the legislative branch. As a result of the change, president is able to appoint as many deputies as he/she wishes. Moreover, one of the deputies who was appointed, not elected by people, will be able to use all powers of the president when there is a vacancy in the office for any reason till the new president is elected. This

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<sup>28</sup> Article 105, Constitution of the Türkiye.

situation gives rise to criticism because a person who does not yield the power granted by people may rule the country in certain situations.

**Article 116:** This article regulates the method of renewing both presidential and parliamentary elections. According to the regulation, the executive and legislative bodies can renew the elections mutually. However, while the president can renew the elections at any time, the legislature requires a three-fifths majority of the total number of the assembly to renew the elections. In both cases, the elections are held simultaneously. In addition, president obtains a right to be candidate if parliament renews elections during president's second term.

Since the presidential system requires a strict separation of powers, the organs should not have the power to dissolve one another. However, this arrangement can also prevent further deadlocks in the political arena. If the president cannot form a majority in parliament and the government's actions are constantly blocked by the legislative branch, the president can resolve this problem by renewing the elections. At the same time, it is subject to debates whether it is effective to attempt to solve the impasse with such a method. Another controversial issue arising from the president's lack of impartiality is what may happen if the party supported by the president fails to win the elections with an absolute majority. In this case, the president may, if he wishes, renew the elections until the political party supported by the president gains an absolute majority. It becomes seriously difficult for a parliament operating under the threat of dissolution to effectively fulfil its duties and responsibilities. This situation reduces the effectiveness of the parliament and seriously disrupts the balance between state powers. It is also possible for the president to use this authority to protect the presidency. The president may attempt to avoid judicial processes by dissolving the parliament that is preparing to refer the president to the supreme court.

The power granted to the president to renew elections can also be an important tool in preventing crises in the political arena. For example, a person with the support of 100,000 citizens can participate in presidential elections. If a person without party support in parliament is elected in this way and government policies are constantly blocked by the parliament, the president can renew elections and resolve crises.

**Article 119:** The state of emergency regulated in this article. As a result of the regulation, president can declare state of emergency alone when certain circumstances are met for a period which does not exceed six months. President can issue presidential decrees on fundamental, individual and political rights and duties during state of emergency. President does not have the power to issue presidential decrees in these areas without the state of emergency. Regulation not only allows fast and rapid action to be taken against serious nation-threatening situations that lead to instability within the country, but is also effective in quickly resolving the problems that led to the state of emergency.

Conversely, if the president leads a political party, it would be easier to obtain the support of the legislative branch. This scenario carries a risk that a president with a legislative majority could abuse this power. For example, if the president declares a state of emergency and its extension is repeatedly approved by president's party, which secured a majority in the legislative body, the president could dramatically expand the executive powers.

**Article 146:** This article regulated the structure of the constitutional court. Changes in this article has been subject to major discussions. As a result of changes in the constitution, 2 military courts were abolished therefore, process to select the members of constitutional court from that of courts came to the end. By doing so, number of constitutional courts decreased to 15 from 17. By constitution, president is authorized to determine the members of constitutional court as follows:

1. President will elect three members from High Court of Appeals, two members from Council of State from among three candidates that will be nominated for each vacancy by their general assemblies, from among their president and members
2. Three members, at least two of them must have graduated from the field of law, will be selected from among three candidates to be nominated for each vacancy by the Council of Higher Education. These candidates will be chosen from the teaching staff that are not members of the Council, working in the fields of law, economics and political sciences.

3. Four members of the constitutional court will be selected by president from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteurs of the Constitutional Court who served as rapporteur minimum for five years.

TGNA on the other hand is authorized to elect only three members in total from among the candidates as follows:

1. Assembly will elect two members for each vacant position from among three candidates, nominated by and from among the president and members of the Court of Accounts.

2. One member from among three candidates nominated by the heads of the bar associations from among self-employed lawyers.

As a result of the transition to the presidential system, the structure of the constitutional court has also been significantly changed. As seen above, the executive branch represented by the President has become an institution that selects the 12 members of the constitutional court. The fact that the 12 members of the constitutional court, which is authorized to try ministers and the President when certain conditions emerge, are appointed by the President also raises questions about whether the constitutional court will function independently. Indeed, the fact that 12 members are appointed by the President while the remaining 3 members are appointed by the parliament creates a great imbalance. Remembering that there is a party led by the president in the TGNA, that this party has a very significant number of deputies, and that there are other parties supporting this party in the parliament, it is possible that the 12 members of the constitutional court were already appointed by the President, and the remaining 3 members might be appointed through the indirect influence of the President. I believe that the ability of the constitutional court, structured in this way, to function as an independent state organization is at risk of falling under the significant influence of the executive body.

**Article 159:** This Article regulates provisions regarding of Council of Judges and Prosecutors. So much so that, number of members in that council has been determined as 13. Minister of Justice will serve as chairman of council, and Undersecretary to Minister of Justice will also be an ex-officio member of the council. Additionally, president will

directly appoint three members from among first category civil judges and public prosecutors and one member from among administrative judges and public prosecutors. Three members will be selected by the TGNA from among members of the High Court of Appeals, one member from among members of the Council of State, and three members from among teaching staff who work in law in higher education institutions and lawyers.

Given this executive power to appoint senior public administrators and ministers, president can appoint both Minister of Justice and the Undersecretary of Justice to CJP, and the Minister of Justice will be both the chairman and representative of the council. Considering executive power to appoint the three members from among civil and one member from among the administrative judges and prosecutors, president will have role to determine six members out of thirteen members. That authority places president to the influential position in the selection of council members, responsible for appointments, imposition of disciplinary penalties and dismissal from office of judges and prosecutors.

CJP is responsible from disciplinary matters and dismissals of the country's judges and prosecutors. The main issue arises from the fact that, the president of the country is also a president of a political party. This situation disrupts the balance between the branches of the state and strengthens executive powers against legislative and judicial branches, rather than separating the powers and enhancing the independence of the branches. One branch being excessively powerful and influencing the others is contrary to the principle of separation of powers. Branches should work in harmony with each other. In this context, the president of a country also being a political party leader might indirectly influence the judiciary. In this system, the president appoints certain numbers of members to the judiciary institutions as the head of the executive branch and has the potential to influence the selection of the remaining members by using the position as the leader of the political party. If the president uses this potential, it will be impossible to discuss the separation of powers in Türkiye. Because all members of the only institution that has disciplinary authority over judges and prosecutors will be elected directly or indirectly by the president.

On this issue, Çelik (2018, 1089-1092) states that the new CJP structure does not meet international criteria. Judges and prosecutors cannot elect their own representatives,

the president with a political party selects almost the half of the board members. In particular, due to factors such as the inability of judge-prosecutor members to elect their own representatives, the fact that the President, who is a party member, will appoint almost half of the board members, and the fact that measures to ensure pluralism in the elections to be held by the legislature have not been provided, it would not be wrong to say that the CJP is structured in a way that is open to partisanship rather than ensuring judicial independence.

**Article 161:** This article regulates the budget and final accounts. Following pivotal paragraph was added as a result of the change: “If the budget law cannot be put into the force within due period, the provisional budget law will be enacted. If the provisional budget law cannot also be enacted, the budget of the previous year will be applied as per the revaluation rate until the new budget law is adopted.”

With the regulation, the government's power over the parliament increased significantly, and the possibility of the parliament gaining superiority over the government by not accepting the budget law was eliminated. New system makes it easier for budget law to be accepted since it requires a simple majority. It can be said that the reason why a special majority is not required is to pave the way for the budget bill submitted by President to be accepted more easily. In the current administration, president doesn't have to agree with assembly on budget. On that occasion, the parliament must either accept the bill proposed by the president, or the previous year's budget will be activated until the parliament accepts it. Therefore, role between legislative and executive changed in favour of executive body.

Legally, budget law is not considered among the ways of supervision of legislative branch in the constitution. However, it is a historical fact that first power of parliaments was not law-making power, instead it was budgetary power. Legislative body emerged to subordinate the rulers, especially in taxation matters, ensured that rulers must have approval of elected representatives of the public on matters regarding taxation. At present, the budget falls entirely under the jurisdiction of the legislative body in US presidential system. Therefore, the president required to negotiate and find a common ground with the legislative body of the country. However, in Türkiye, president is allowed to continue with the last year's budget if legislative branch does not accept the budget law presented

by the president. Gözler, (2017), discussed this historical matter above and stated that new presidential system takes away this last weapon that the legislature had over the executive body.

Sargın, (2019) discussed that, current structure in which the president has authorized to propose the budget and final account and allow executive to continue with previous year's budget is an absolute shift from separation of powers in the role between two branches. Because, legislature body of the state lost most crucial ways of its supervision on the executive branch. President is no longer required to find a common ground with legislative on one of the most important matters. As a result of the change, prominently, executive body may not be effectively monitored by the legislative branch.

In addition, there is an inconsistency especially in the regulations regarding budget issues. It gives more authority to the Presidency and strengthens its dominant position in the executive branch, completely removing the administrative system from separation of powers. The logic behind the presidentialism is to ensure a clear and definitive separation of powers between the three organs of the state. Işık (2023, 128) emphasizes this inconsistency by stating that this procedure regarding the budget and final accounts is against the separation of powers and that this is the reason for the existence of the presidential system.

Coşkun (2017, 24-26) discussed regarding the budget that, when the budget prepared by the President is not approved by the Parliament, giving the President the opportunity to implement the previous year's budget by increasing it according to the revaluation rate means that one more tool of control over the executive is taken away from the Parliament.

## **CHAPTER 4**

### **4.1. Conclusion and Discussion**

When the new system implemented with the approval of Turkish People, the experience and knowledge gained regarding the parliamentary system was abandoned. Drawing support by politicians such as Süleyman Demirel and Turgut Özal, who left indelible marks on the Turkish political history, system was embraced to provide stronger and effective administration. The change through the presidential system was influenced by the historical background of military coups, as well as the disruptions and disputes in the legislation under the parliamentary system and the political, economic and social consequences caused by these disruptions. These factors together shaped the Turkish public's positive perspective on the system change.

Supporters have been advocating the system change in terms of increased stability and speed in the administration processes while opponents were mostly emphasized the potential threats on the separation of powers, erosion of democracy and democratical institutions in the country. Both advocates and critics of the presidential system appear to have valid concerns about the speed it provides and the potential erosion of the separation of powers it embodies. The transition to Turkish-style presidential system has provided incredible speed to the system. Abolition of the prime ministry, measures to facilitate the adoption of budget law, easier issuance of presidential decrees, increased difficulty in overriding presidential vetoes led to significantly increased velocity in the administration and simplified bureaucratic processes.

On the other hand, the expansion of executive power has raised concerns about the separation of powers. In particular, the president's sole authority to appoint senior public administrators and to regulate these appointments through presidential decrees, the authority to appoint a significant number of members to the judicial branches, increased veto power, and the abolished concept of an impartial president have contributed to this growing concern.

At the end of this thesis, it can be understood that there are serious differences between this new system adopted by the Republic of Türkiye and the presidential system in theory. So much so that, if one of the bodies decides to renew the elections, both presidential and parliamentary elections must be renewed and elections must be held simultaneously. This unique regulation ensures that a president which lose both public and legislative support, can be taken out of the office by legislative branch. Moreover, president can renew the elections when presidential decrees continuously blocked by legislative branch, therefore president can prevent instability. In theory, presidential system includes strict separation of powers; therefore, powers of the state cannot dissolve each other. This dissolving mechanism in the presidential system is unique and differentiates the Turkish presidential system from others.

Even though regulation regarding re-election seems as balancing mechanism and solution to the possible deadlocks, in essence, it is possible for this regulation to be used only by the president. Political party in the legislation led by the non-neutral president, coupled with the simultaneous elections, may ensure president to have significant powers and support from legislative branch. Given that support for president and obligation for legislative branch to meet three-fifths of majority for re-election, it can be said that this regulation can be only used by the president in practice.

Under the new system, the parliament is not equipped with mechanisms such as vote of no confidence to remove the president from the office. The option of renewing elections is not feasible for the TGNA at the moment. In this system, presidents serve for a fixed time period and cannot be removed from the office during this term, regardless of their actions. This poses a significant risk: if a president who undermines the separation of powers and the stability remains in power, he or she could rule the country without accountability for many years. The rigid structure of the presidential system could lead to prolonged periods of instability, as the president's ability to remain in office unchecked could exacerbate political and social tensions. Ironically, while presidential systems are often praised for enhancing stability, the structure itself can lead the country to instability.

The executive branch, has significantly expanded its authority and includes the power to regulate various areas of social and economic rights and obligations through

presidential decrees. These areas cover a wide range from education and labour rights to healthcare, cultural preservation and especially the most important issues such as expropriation, nationalization and privatization. President can make regulations within these areas directly.

In addition, the fact that the president can single-handedly appoint senior public administrators through presidential decrees, terminate their duties, and most importantly regulate the procedures regarding their actions, without the permission of the legislative body, has positioned the government in a stronger position against the assembly. The fact that it is not clearly stated who are those senior public administrators further increases the effect of this authority granted to the president. This situation is absolutely against the separation of powers and increases the influence of the government over the Turkish administrative system.

Furthermore, given the president's authority to appoint 12 out of 15 members of constitutional court is one another potential threat to separation of powers. Because, appointed members do not require the consent from the legislative branch, therefore doubts regarding the principle of independence of constitutional court from the executive influence are increasing. Only 3 members will be appointed by the legislative branch in which president might also have influence thanks to non-neutrality of the president, using chairmanship of a political party. Another judicial institution that is very important in terms of independence of the judges and prosecutors is the CJP. Head of the government, that is president, is allowed to choose 6 out of 13 its members, so a significant portion of council will be chosen by the government. The rest of the members will be elected by the legislature body.

Apart from this, if the party led by the president gains the majority in the parliament, president can indirectly elect the remaining members of the judicial institutions through the deputies of the party he/she leads. Thus, the president can weaken the independence of democratic institutions by establishing authority over the parliament through simultaneous elections and over the judiciary through the deputies of the party he/she leads, and this can, over time, damage all economic, political and democratic institutions of the country.

Given that in Türkiye, political parties' function under the hegemony of the party leaders and a very small minority with high discipline determines members of parliament, non-neutral president holds significant position in the selection of parliamentary members as the chairman of political party. This situation coupled with simultaneous elections will not result in a strict separation of powers as claimed, but rather might result in the consolidation of powers.

As a result of the extensive research, it's evident that the presidential system, that is being implemented in Türkiye has disrupted the principle of the separation of powers. Instead of providing a stronger balance and effective checks between the legislative, executive, and judicial branches of the state, the new system has introduced checks and control mechanisms that are impossible to implement in the current structure. The system weakens the power of the legislative and judicial organs against the executive organ and seriously deviates from the principles of the separation of powers.

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