

PARLIAMENTARISM, RATIONALIZED PARLIAMENTARISM AND APPLICABILITY IN TURKEY

(Research Article)

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Abstract

Many explanations and interpretations about the origin, history and nature of the separation of powers doctrine show that the democratic value of the parliamentary government system is at a high level. Indeed, in contrary to the general knowledge, not only the presidency system but also the parliamentary government system keeps its democratic value at high level in many aspects and establishes a brake and balance mechanism between the powers. This study discusses the features of the parliamentary system, especially the rationalized parliamentary system, and the possibility of its applicability in Turkey. The study reveals that, for Turkey, the system inspired by the presidential system, which is called the Presidential Government System is more convenient than the parliamentary system in terms of breaking down democracy, and this brings deficiencies in terms of democracy as a whole, especially on the constitutional system including the fundamental rights and freedoms. In analysing the subject, the study argues that the capability of the rationalized parliamentary system which is a form of the parliamentary government system to provide inducement in bolstering the democracy in Turkey should be earnestly contemplated considering that the legislative, executive and judiciary powers that define the pure presidency system lack independence in terms of the power and influence map. It is claimed that the inducements created by the parliamentary system may offend democracy as well as strengthen the brake and balance mechanism between the powers. In this context, we briefly addressed the historical precedents of the current types of the parliamentary government, and we emphasized the presence of various different types of parliamentarism while

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discussing the main characteristics of the parliamentarism. We have also attempted to review the empirical evidence on which the answer to this question may be based for Turkey around the question of whether it is superior or more stable than presidential forms as a system of government. Here, we sometimes evaluated the deficiencies in the Presidential Government System. In this respect, we have tried to emphasize the importance of designing a rationalized form if Turkey is to adopt the parliamentary system. We said that by doing so, Turkey would have attained a higher level of constitutional fiction in terms of its democratic value and brake and balance system

Keywords

Separation of Powers, Government Systems, Parliamentary Government System, Rationalized Parliamentarism, Applicability of the Rationalized Parliamentarism in Turkey

PARLAMENTARİZM, RASYONELLEŞTİRİLMİŞ PARLAMENTARİZM VE TÜRKİYE'DE UYGULANABİLİRLİK

(Araştırma Makalesi)

Öz

Erkler ayrılığı doktrinin kökeni, tarihi ve doğasıyla ilgili pek çok açıklama ve yorum parlamenter hükümet sistemine ilişkin demokratiklik değerin yüksek seviyede seyrettiğini göstermektedir. Gerçekten de çok bilinenin aksine yalnızca başkanlık sistemi değil, aynı zamanda parlamenter hükümet sistemi de pek çok açıdan demokratiklik değerini yüksek seviyede tutmakta ve erkler arasında fren ve denge mekanizmasını tesis etmektedir. Bu makale parlamenter sistemin ve özellikle rasyonelleştirilmiş parlamenter sistemin özellikleri ve Türkiye'de uygulanabilirliği olasılığını tartışmaktadır. Makale, Türkiye açısından Cumhurbaşkanlığı Hükümet Sistemi olarak adlandırılan başkanlık sisteminden mülhem sistemin demokrasiyi parçalamak bakımından parlamenter sisteme göre daha elverişli olduğunu ve bunun başta temel hak ve özgürlükler olmak üzere anayasal kurgu üzerinde bir bütün olarak demokratiklik bakımından beraberinde noksanlıklar getirdiğini ortaya koymaktadır. Konuyu irdelerken, saf başkanlık sistemini tanımlayan yasama, yürütme ve hatta yargının yetki ve etki haritası açısından bağımsızlıklarının olmadığı düşünüldüğünde parlamenter hükümet sisteminin bir formu olan rasyonelleştirilmiş parlamenter sistemin Türkiye'ye yönelik demokrasiyi pekiştiren teşvikler üreteceği ihtimali üzerinde ciddi düşünülmesi gerektiğini söylemektedir. Parlamenter sistemin yaratacağı teşvikler demokrasiyi güçlendirebileceği gibi erkler arasında fren ve denge mekanizmasını

yeniden güçlendireceğini iddia etmektedir. Bu bağlamda parlamentarizmin temel özelliklerini tartışırken, bugün var olan parlamenter hükümet biçimlerinin tarihsel öncüllerine kısaca değindikten sonra günümüzde birçok farklı parlamentarizm biçiminin var olduğunu vurguladık. Bir hükümet sistemi olarak başkanlık biçimlerinden daha üstün mü yoksa daha istikrarlı mı olduğu sorunu etrafında Türkiye için bu sorunun cevabının dayandırılabilceği ampirik kanıtları da gözden geçirmeye çalıştık. Burada kimi zaman Cumhurbaşkanlığı Hükümet Sistemindeki noksanlıklar üzerinden değerlendirme yaptık. Bu bakımdan Türkiye'nin parlamenter sistemi benimseyecek olursa bunun rasyonelleştirilmiş formunun dizayn edilmesinin önemini vurgulamaya çalıştık. Böyle olmakla Türkiye'nin demokratiklik değeri ve fren ve denge sistemi bakımlarından daha yüksek seviyeli bir anayasal kurguya kavuşmuş olacağını söyledik.

Anahtar Kelimeler

Erkler Ayrılığı, Hükümet Sistemleri, Parlamenter Hükümet Sistemi, Rasyonelleştirilmiş Parlamentarizm, Rasyonelleştirilmiş Parlamentarizmin Türkiye'de Uygulanabilirliği

INTRODUCTION

The parliamentary system is based on a simple logic. This is the coordinated and cooperative functioning of the powers. However, the parliamentary system is not limited to this; the system is indirect and is based on the gradual constitutional accumulation of the past. It may be said that the parliamentary system, compared to the presidential system, supports the tendency of reconciliation, is based on the brake-balance logic in terms of policy making, and has certain advantages such as the incentives created by efforts in this direction.

It may be suggested that the parliamentary system and the parliamentary democracy developed accordingly have been widely adopted by both the political elite and the scientific community in comparative constitutional engineering. Indeed, it should be noted that the parliamentary system is less controversial in terms of its more democratic current than the presidential system with its rules and institutions.

The present study discusses the ways of solving the conflicts between the legislative and executive powers through analysis of the nature of the delegation relations and corporate characteristics defining the parliamentary system and the extent of its influence on the rationalized parliamentary system in consideration of the current constitutional structure in Turkey and demands of the public and the political elites.

In this context, we briefly addressed the historical precedents of the current types of the parliamentary government, and we emphasized the presence of various different types of parliamentarism while discussing the main characteristics of the parliamentarism. We have also attempted to review the empirical evidence on which the answer to this question may be based for Turkey around the question of whether it is superior or more stable than presidential forms as a system of government. Here, we sometimes evaluated the deficiencies in the Presidential Government System. In this respect, we have tried to emphasize the importance of designing a rationalized form if Turkey is to adopt the parliamentary system.

As such, we focused on the possibility of adopting a rationalized parliamentary system as an off-path proposal for Turkey. In this sense, we have observed that the parliamentary system and the parliamentary democracy that is developed accordingly may be appropriate in terms of providing a brake-balance mechanism between the powers and determining and overcoming the conditions created by the problems of democratic representation, especially shaped around the Assembly and which may lead

to the dysfunction of the Assembly. In this respect, we said that the parliamentary system for Turkey may be appropriate in terms of authorization and accountability.

I. PRELIMINARY ISSUE: FUNCTIONAL VALUE OF THE SEPARATION OF POWERS IN CLASSIFICATION OF THE GOVERNMENT SYSTEM

Separation of powers provides for the qualitative separation of the legislative, executive and judiciary powers that are different functions of the government. However, it should be noted that the reasoning of this separation has not been clarified sufficiently in the canonical literature of the politics and law theory of the 17th and the 18th centuries. Indeed, as argued by Waldron, reasoning of the Montesquieu are mere tautologies in the contemporary sense even though they were brought forward by supporting with the empirical data. In the shadow of these tautologies, modern constitutionalism has taken the separation of powers as granted¹ and put it into practice. But here, we need to find the moral foundations in the principle of separation of powers with a qualitative examination and talk about their functional value.

The issue we will focus on as a preliminary issue is the separation of powers, which is a political and legal principle for evaluating the constitutional and legal arrangements of the parliamentary government system. What is this principle and why is it important? In order to explain this principle, we need to mention two more principles regarding the functional value of the principle. The first of these is the principle of division of power, which guides us to avoid excessive concentration of political power in the hands of any person, group or institution. The second is the control-balance principle, which means balancing the exercise of authority by any power holder with the exercise of authority by other power holders. It is required to mention that these two principles have functional value in terms of the separation of powers that determine the government systems.

¹ **Waldron**, Jeremy: "Separation of Powers in Thought and Practice", *Boston College Law Review*, V. 54, 2013, 433-468, p. 433-434.

Although Posner and Vermeule² and Manning³ have expressed their doubts about the constitutional/legal status of the separation of powers principle, in our opinion, it seems essential to put forward the principle in question with certain judicial formulations and to grasp it in uncontaminated political theory terms, especially in the context of Manning's critique. Accordingly, the thesis we will develop has two sides. First, the integrity of the state organs, each having its own distinctive powers and functions, must be preserved. In this respect, we can talk about the realization of the supremacy of the legislative power, the independence⁴ of the judiciary power, the derivative nature of the executive power. Second, we should move away from articulated or multi-layered functional approaches and move towards differentiated governance styles. If the functional integrity of the state organs is ensured, a constitutional fiction will be built in which the state power is better exercised and more respectful of each other's authority and influence.

We see this in the style of introducing the political principle that the legislative, executive and judiciary powers should be separate and different in James Madison's Federalist No. 47: *"No political truth has any greater intrinsic value than the one on which the objection is founded or stigmatized by the authority of the more enlightened patrons of freedom. The concentration in the same hands of all powers, legislative, executive, and judiciary, whether one, several, or more, hereditary, self-appointed, or discretionary may rightly be pronounced as the exact definition of tyranny. Thus, if the federal Constitution were indeed responsible for the accumulation of power, or a mixture of powers, which tended dangerously towards such accumulation, no further argument would be needed to inspire universal condemnation of the system."*

² See. **Posner**, Eric A./**Vermeule**, Adrian: The Executive Unbound, Oxford University Press, Oxford ve New York 2010, p. 208.

³ **Manning**, John F.: "Separation of Powers as Ordinary Interpretation", Harvard Law Review, V. 124, 1940, 1939-2040, p. 1944-1945.

⁴ La Porta et al. state that an independent judiciary and constitutional review functions as a judicial review against abuse of power by other organs of government. Accordingly, different organs of the Government can act as "veto players" that can prevent other elements from acting unilaterally. **La Porta**, Rafael/**Lopez-de-Silanes**, Florencio/**Pop-Eleches**, Cristian/**Shleifer**, Andrei: "Judicial Checks and Balances", Journal of Political Economy, V. 112, N. 2, 2004, p. 445-470.

From this perspective, separation of powers does not stand alone as a canonical principle of constitutionalism. The principle thus works as a set of tightly knit principles that work both separately and together as touchstones of corporate legitimacy. In this respect, the principles related to the separation of powers are as follows:⁵

- a. The principle of separation of functions of state organs: functional separation.
- b. The principle developed against the concentration of too much political power in the hands of any person, group or institution: separation of powers.
- c. Principle requiring the ordinary consent of one government agency to the actions of another, thereby allowing one agency to control or veto the actions of another: brake and balance.

One of the important innovations embodied in constitutionalism is the mechanical functioning of a set⁶ of brake and balance mechanism that allow one branch of state power to check and balance the power of the others. Likewise, in Federalist No. 51 (1788), James Madison discusses the role of brakes and balances and openly admits that they are needed because they are needed to counter the potential for government elite control to oppress the masses. In this context, Madison strikingly suggests the following: “*One must have ambition to resist ambitions. . . It may be a reflection of human nature that such devices are necessary to control government abuses.*”

Consequently, we assume that brake and balance represent the mechanical principle of separation of powers. In this respect, the brake and balance mechanism are one of the few possible manifestations of the separation of powers. This expresses the functional value of the separation of powers, which prevents the intense concentration of power. We argue that there is a clear correlation between the parliamentary system and the brake and balance mechanism, where intense power control is achieved.⁷ Beyond any doubt, this constitutional engineering can be guided by various political and sociological conditions. However, we intent to show that the brake and

⁵ In the same direction see. **Waldron**, p. 438.

⁶ **Holcombe**, Randall G.: “Check and Balances: Enforcing Constitutional Constraints”, *Economics*, V. 6, N. 57, 2018, 1-12, p. 7.

⁷ Accordingly, parliamentary systems are considered more superior than the presidency systems in terms of maintaining the democracy. For contrary opinion, see. **Hiroi**, Taeko/**Omori**, Sawa: “Perils of Parliamentarism? Political Systems and the Stability of Democracy Revisited”, *Democratization*, V. 16, N. 3, 2009, 485-507, p. 485.

balance concept is an empty cup on its own based on the examples from the Western democracies where the parliamentary system functions and only “hard” factors such as balance of the political powers and “soft” factors⁸ such as commitment of the elite to a certain order⁹ are effective.

II. PARLIAMENTARY GOVERNMENTAL SYSTEM

In constitutional democracies, mainly two forms of government are adopted: presidential or parliamentary. Legislative and executive relations are based on the classification of government systems.¹⁰ This dynamic of government systems conceptualization is central to comparative constitutional engineering. One aspect of this engineering is the parliamentary government system. Parliamentary government is a form of constitutional democracy¹¹ where the executive power emerges from the legislative power and is accountable to the legislative power. Indeed, parliament is the only institution that is democratically legitimized in parliamentary systems, and the government derives its authority from the parliament’s trust.¹²

In the parliamentary system, the parliament is sovereign in appointing and dismissing the government. The directly or indirectly elected president¹³ does not have significant legislative power, cannot form a government autonomously and cannot dissolve parliament for political reasons.

Consequently, we need simple and mutually exclusive definitions of the types of regimes to put our constitutional engineering analysis into practice.

⁸ **Da Ros, Luciano/Taylor, Matthew M.:** “Check and Balances: The Concept and Its Implications for Corruption”, *Revista Direito GV*, V. 17, N. 2, 2021, 1-30, p. 1.

⁹ The phenomenon of limited power will not apply here unless constitutional rules are constrained by those who interpret and apply them, and if a few elites interpret and enforce the rules, any control over their power must come from other elites. The masses have no power to restrain the elite, neither through democratic oversight nor otherwise. See **Holcombe**, p. 7.

¹⁰ **Cheibub, Jose Antonio/Elkins, Zachary/Ginsburg, Tom:** “Beyond Presidentialism and Parliamentarism”, *British Journal of Political Science*, 2013, 1-30, p. 1.

¹¹ **Turhan, Mehmet:** “Parliamentarism or Presidentialism?”, *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, V. 47, I. 1, 1992, 153-168, p. 155.

¹² **Linz, Juan J.:** “Democracy: Presidential or Parliamentary: Does It Make a Difference?”, *The Role of Political Parties in the Return to Democracy in the Southern Cone*, July 1985, 1-19, p. 2.

¹³ For a detailed study, see. **Boyunsuz, Şule Özsoy:** *Başkanlı Parlamenter Sistem*, On İki Levha Yayınları, 2nd Edition, İstanbul 2014, p. 70 etc.

In this respect, a “pure” parliamentary democracy is characterized by the following two essential features:¹⁴

- a. Consisting of a prime minister and cabinet, executive power derives from the legislative assembly.
- b. The executive power is always subject to potential impeachment through a “no confidence” vote of the majority of the legislative power.

Accordingly, definitive aspects of the parliamentary and presidential democracy firstly address the origin of the legislative and executive authority and survival thereof.¹⁵ The executive power derives from the parliamentary system. Determining who will form a cabinet may vary according to corporate principles. But still, the process of forming a government usually falls to the majority party, if any. Otherwise, the government emerges by bargaining between politicians who took their power in the most recent parliamentary elections. Once the government is formed, it remains in office as long as it maintains the “confidence” of the majority in parliament. Again, the exact rules vary for determining when a government has lost that trust, but the executive is always subject to parliament’s continued trust.

Parliamentary systems may be characterized by the absence of a clear separation of powers between the executive and legislative branches, resulting in a different set of checks and balances compared to those found in presidential systems. Parliamentary systems usually have a clear differentiation between head of government and president. While the chief of government is the prime minister, the head of state is usually a figure. Parliamentarism is simple, indirect and based on constitutional accumulation gradually acquired in the past. Compared to a presidential system, parliamentarism has certain advantages,¹⁶ such as efficiency in decision-making and incentives for effort.

The most important manifestation of this bundle of advantages is about democratic stability. To avoid any misunderstanding, we must emphasize that we do not argue that any parliamentary system is ipso facto more likely

¹⁴ **Shugart**, Matthew S.: “Comparative Executive-Legislative Relations”, içinde *The Oxford Handbook of Political Institutions*, Ed. Sarah A. Binder, R. A. W. Rhodes ve Bert A. Rocman, 2008, 1-25, p. 5.

¹⁵ **Shugart**, p. 5-6.

¹⁶ **Storm**, Kaare: “Delegation and Accountability in Parliamentary Democracies”, *European Journal of Political Research*, V. 37, 2000, 261-289, p. 261.

to achieve democratic stability than any presidential system. Further, as Linz points out,¹⁷ we are not suggesting that any parliamentary regime will make better policy decisions than any presidential government, which is even more difficult to decide.¹⁸ Undoubtedly, there are bad practices in both forms of government.¹⁹ However, after noting that our study does not take into account the many possible variants of parliamentarism and the complex issues surrounding dual-government semi-presidential or semi-parliamentary systems, empirical data show us that the parliamentary system is more current democratically than the presidential system except for the pure presidential system²⁰ in the US. We acknowledge that the study of democratic regimes is inseparable from the study of electoral systems, and that our analysis does not cover all possible presidential election methods.

It would be helpful to explore how the fundamental contradiction between the desire for a strong and stable executive and the latent suspicion of the same presidential power affects political decision-making, leadership style, political practices, and discourse of both. It presents a dimension of conflict that cannot be fully explained by socio-economic, political or ideological conditions.²¹ Even when one accepts the controversial idea that Turkish society in particular is inherently personality-biased, there may be little doubt that in some cases this tendency is powered by institutional arrangements.

Perhaps the best way to summarize the main differences between presidential and parliamentary systems in this respect is to say that while parliamentarism gives flexibility to the political process, the presidential system makes it rather rigid. Proponents of the presidency may argue that this rigidity is an advantage, as it guards against the uncertainty and instability that characterize parliamentary politics. After all, under

¹⁷ **Linz**, Juan J.: "The Virtues of Parliamentarism", *Journal of Democracy*, V. 1, N. 4, 1990, 84-91, p. 84-85.

¹⁸ Especially, see. **Horowitz**, Donald L.: "Comparing Democratic Systems", *Journal of Democracy*, V. 1, N. 4, 1990, p. 73-79.

¹⁹ For a critic, see. **Mainwaring**, Scott/**Shugart**, Matthew: "Juan Linz, Presidentialism, and Democracy: Critical Appraisal", Kellogg Institute Working Paper #200, July 1993, 1-26, p. 9.

²⁰ **Calabresi**, Steven G.: "The Virtues of Presidential Government: Why Professor Ackerman Is Wrong to Prefer the German to the U. S. Constitution", *Constitutional Commentary*, V. 18, 2001, 51-104, p. 56 etc.

²¹ **Linz**, Juan J.: "The Perils of Presidentialism", *Journal of Democracy*, V. 1, N. 1, 1990, 51-69, p. 55.

parliamentary government, countless actors-parties, their leaders, even ordinary legislators-can accept fundamental changes, cause reorganizations, and, above all, make or break prime ministers at any time between elections. However, while the need for authority and predictability may seem to favour the presidential system, it can make presidential administration less predictable. Second, it may always seek to strengthen its legitimacy and authority, either through a vote of confidence or the dissolution of parliament and subsequent elections. Also, a prime minister may be replaced without necessarily creating a regime crisis.²² Finally, as shown by Linz,²³ such elements seem to be large during periods of regime transition and consolidation, when the rigidities of a presidential constitution must indeed appear dysfunctional, especially when compared with the possibility of adaptation offered by parliamentarism.

III. RATIONALIZED PARLIAMENTARY SYSTEM

The homeland of the parliamentary regime is England. The parliamentary system was born here and spread to the European Continent and other territories. Undoubtedly, the existence of a stable majority in the parliament in England constituted an important parameter in the operation of this system. In this respect, apart from one or two exceptions, the problem of a stable majority has not been encountered in England, where the disciplined bipartisan political life is almost settled. However, in majoritarian parliamentary systems, quests such as creating a sustainable majority in the parliament and thus stabilizing the government did not come to the fore. Therefore, the system revisions in question have been brought to the agenda in terms of countries that are characterized as parliamentary systems without a majority.²⁴ Because the pure form of the parliamentary system has not been successful in producing political results like in England in the countries

²² Of course, each of the potential disturbances to the presidential system is more resilient in parliamentary regimes where governments emerge from and are accountable to the legislative power. Also, in a parliamentary regime, there is often political coherence between the majority of the parliament and the cabinet. Even a cabinet made up of parties that do not have a legislative majority is compelled to gain broad enough support in Parliament to gain confidence or get votes of no confidence and pass legislation. **Colomer**, Josep M./**Negretto**, Gabriel L.: "Can Presidentialism Work Like Parliamentarism?", *Government and Opposition*, 2005, 60-89, p. 60.

²³ For details supporting this idea, see. **Linz**, *The Perils*, p. 55 etc.

²⁴ **Anayurt**, Ömer: *Anayasa Hukuku Genel Kısım*, Seçkin Yayınları, Ankara 2018, p. 377.

where it was transferred considering social, political and legal variables such as the election system, structure and functioning of the political parties.²⁵

In the 20th century, although the parliamentary system retained its essential elements, in some countries it acted as the scene of different practices of the conventional models. Some institutions have been added to the system in order to speed up the parliament, especially to make the governments stable and strong and sustainable before the parliament. In the doctrine, parliamentary system practices based on these features are described as “rationalized parliamentary system”.²⁶ In particular, the following measures have been taken in cases where there is no clear majority or an absolute majority in the parliament or it has been lost in the process:²⁷

- a. Giving power and stability to the government
- b. Prevention of the fall of the government due to simple, unnecessary and partisan reasons
- c. Ensuring that the government is formed even when the necessary majority is not obtained in the parliament (even when there is minority)
- d. Allowing minority governments to maintain their existence.

On the other hand, it should be noted here that the rationalization of the parliamentary system has the same aim as the tendency to strengthen the executive power. Because the rationalized parliamentary system comes into existence as a set of techniques developed to stabilize the government, make it effective against the legislative power and, so to speak, not to condemn it. However, this issue may strengthen the parliament as well as weaken it depending on the situation. Therefore, in our opinion, the parliament’s becoming a more productive and faster organ with a rationalized parliamentary system, at least in terms of its democratic nature, will not have

²⁵ In the same direction, **Anayurt**, p. 377.

²⁶ Corrections brought to the parliamentary system without a majority may be grouped around two formulas: Return to dualist parliamentarism, dualization and rationalization of parliamentarism, rationalization. Institutional structures may be divided into two categories according to the gradation in dualism techniques: Semi-presidential and presidential parliamentary structures. However, there is a common logic of both structures, which is to support the executive outside the parliament. Rationalization is the set of techniques to artificially realize the political coherence arising from the existence of a political majority, through legal procedures. See. **Çağlar**, Bakır: *Anayasa Bilimi*, BFS Yayınları, İstanbul 1989, p. 280.

²⁷ **Anayurt**, p. 378-379.

a definite result.²⁸ However, let us emphasize that the rationalization techniques of the parliamentary system do not completely transform the parliamentary system, nor transform it into a brand-new government system. Therefore, these issues help to update the parliamentary system²⁹ and transfer it to the socio-political plane.

The rationalization techniques in the parliamentary system may be briefly explained as follows:³⁰

a. *Founder (Constructive) Motion of Censure (Form and Transfer Method)* As we explained above, in parliamentary systems, the government or the prime minister may be overthrown with a vote of no confidence by implementing motion of censure, and in this way the existence of the government may be terminated. This is one of the basic rules of the parliamentary system. Especially in the absence of stable majorities in the parliament, the motion of censure is a dangerous tool for governments. It is often used for partisan reasons. Here, in order to prevent the misuse of the institution of no confidence and stabilize the government, an “authentic tool”, which can be called the “constitutive motion of censure”, was developed with the 1949 German Constitution. Pursuant to Article 67 of the 1949 Federal German Constitution, a new prime minister must be agreed upon in order to cast a vote of no confidence in a prime minister and thus overthrow the government. If this does not exist, whatever the numerical majority is, it cannot overthrow the prime minister and therefore the government with a vote of no confidence. In that case, in order to overthrow the prime minister and therefore the government, it is necessary to have a replacement prime minister. As such, it was intended to prevent political attempts to overthrow the government with a legal instrument. This institution, which was established in the parliamentary system with the German Constitution, has become increasingly widespread and has shown its influence especially on new constitutions. As a matter of fact, we see this regulation in Articles 158 of the Polish Constitution, 96 of the Belgian Constitution, and 57 of the Georgian Constitution. The founding

²⁸ For comparison **Anayurt**, p. 379.

²⁹ **Yücel**, Bülent: *Parlamentar Hükümet Sisteminin Rasyonelleştirilmesi ve Türkiye Örneği*, Adalet Yayınevi, Ankara 2009, p. 155.

³⁰ For explanations here, see **Anayurt**, Ömer: *Anayasa Hukuku Genel Kısım, Seçkin Yayınları*, 4th Edition, Ankara 2021, p. 435-439; **Batum**, Süheyl/Yılmaz, Didem/**Köybaşı**, Serkan: *Anayasa Hukuku: Temel Kavramlar ve Genel Esaslar, On İki Levha Yayıncılık*, 1st Edition, İstanbul 2021, p. 479 etc.; **Gözler**, Kemal: *Anayasa Hukukunun Genel Esasları*, Ekin Yayınevi, 5. Edition, Bursa 2014, p. 255 etc.

(constructive) vote of no confidence is a tool that makes a significant contribution to the stability of the parliamentary government. In this way, there is no interruption in the system. As soon as the government was overthrown, a new one is formed and takes office.

b. *Limitation of the Motion of Censure:* In the parliamentary system, the government must have the confidence of the parliament both during its formation and in the process after its formation. In this context, in the parliamentary system, the government may be subject to motions of no confidence from time to time. The goal here, of course, is to overthrow the government. However, this method may be used indiscriminately just to keep the government under pressure and harassment. In this context, the following regulations are included in the second paragraph of Article 49 of the French Constitution: (1) A motion of censure may be given by at least 1/10 of the deputies, (2) A deputy may sign a motion of no confidence at most three times in ordinary meetings of a legislative year and only once in extraordinary meetings, (3) There must be at least 48 hours between the motion of censure and voting. Similar restrictions may be seen in many of the Constitutions made especially since the 1990s. For example, pursuant to the Bulgarian Constitution, if the motion of censure about the prime minister is rejected, a new motion of censure may not be given before expiry of six months. A government overthrown with the vote of no confidence takes office until formation of a new government (AY. a. 89/3, 111/3). Again, pursuant to the Serbian Constitution, if a motion of confidence is rejected, it may not be subject to a new motion of no confidence until expiry of at least 180 days (AY, a. 130).

c. *Facilitating Formation of the Government and Making it Difficult to Overthrow the Government* The parliamentary system is based on the fact that the government has a sufficient majority in the parliament. Therefore, the government must have the majority in the establishment and maintain this majority in the subsequent process. From the conventional perspective, problems may arise from time to time in the formation and continuation of governments. In order to eliminate these problems to a certain extent and to provide stability to the governments, some regulations have been introduced in some countries, such as facilitating the formation of governments and making it difficult to overthrow them. In this regard, the formula mostly adopted is to seek qualified majorities for the government to be overthrown, while simple majorities are sufficient to obtain a vote of confidence. French

5th Republican Constitution (a. 49/1) and 1982 Constitution before 2017 Amendment (a. 99/5) are typical examples of this.

d. *Guillotine Method*: This technique is specified in paragraph 3, Article 49 of the French 5th Republican Constitution. The rule aims to ensure that the government, which does not meet the quorum before the legislative power but is not or cannot be overthrown can enact laws. So, the essence of the institution is as follows: If the government does not have the necessary support for the law or for a project or a decision on general policy to be passed by parliament, it may ensure that its own political responsibility is put in place to make that decision or pass the law. As such, the political meaning and message of the institution is as follows: If you don't want the government, take over, if not, pass the law. Undoubtedly, this path involves political risk-taking. Because the government is willing to drop itself in response to the rejection of the law. So much so that Sartori named the institution "guillotine"³¹ and it was also adopted in this doctrine.

e. *Vote of Confidence Under the Risk of Termination*: The purpose of this tool is to get a vote of confidence from the parliament by activating the power of dissolution and to neutralize the motions of censure. In other words, it is to get a vote of confidence from the parliament by showing the termination card. The prototype of this method is the 1949 Federal German Constitution. As a requirement of the parliamentary government system, it is obligatory for the government to receive a vote of confidence from the parliament. However, if the government does not receive the required vote of confidence in its establishment, the prime minister may request the president to dissolve the Federal National Assembly within 21 days. Undoubtedly, the deputies may make the dissolution ineffective by appointing a new prime minister within 21 days. (AY a. 68). This tool that is in the hands of the prime minister exposes the parliament to the pressure of dissolution. Thus, a more rational use of the vote of confidence weapon of the parliament can be ensured. Today, it is seen that many constitutions that have adopted the parliamentary system also include this institution.

f. *Measures Aimed At Effective Functioning of the Parliament*: The tools and institutions added to the system in the process in order to prevent the above instability in the executive power have produced positive results. However, it was thought that these remedial regulations should be integrated with making the legislative power effective and efficient, and certain

³¹ Sartori, Giovanni: *Comparative Constitution Engineering*, Translation. Ergun Özbudun, Yetkin Yayınları, Ankara 1977, p. 215.

measures were taken in terms of the legislative power. From this perspective, the following improvements are remarkable in attempts to rationalize the system: (1) Limiting the speaking times in commissions, limiting the duration of commission meetings, in some cases skipping some parts of the commission stage or all, (2) Getting quicker and more reliable results with the introduction of technological tools (such as electronic voting), giving place to block voting method to prevent interruptions caused by the continuous legislative amendment proposals (3) To reduce the number of meetings and decision-making quorums so that the legislative body can gather easily and take decisions easily, (4) To prevent the degrading of the law by enacting many unnecessary issues by the legislative power so that everything is regulated by the legislative power. For the purpose of leaving some issues under the regulation of the executive branch, (4) allowing the automatic termination of the legislative power if it cannot take some decisions (for example, not electing the president).

It is certain that the constitutional techniques that we briefly explained above and that aim to rationalize the parliamentary system make a positive contribution to the system. Indeed, it is a fact that the constructive vote of confidence, stabilizes the system especially in the case of Germany. However, it would be an optimistic approach to expect political stability to be completely resolved with only constitutional techniques. There is, of course, a correlation between the type and means of government system and stability in the political system. However, there are many other social and political variables that affect government stability in government systems. These variables,³² which can be counted as political parties, party systems, electoral systems, political structure and culture, and the level of political fragmentation, make sense when combined with constitutional institutions and instruments in the total mass.

IV. APPLICABILITY OF THE RATIONALIZED PARLIAMENTARY SYSTEM IN TURKEY

The debate on government systems has always been and continues to be on Turkey's agenda. These debates, especially inflamed by the statements of political elites, have been keeping academic circles busy for a long time.³³

³² **Akartürk**, Ekrem Ali/**Tevfik**, Sönmez Küçük: Güçlendirilmiş Parlamenter Sistem, Adalet Yayınları, Ankara 2021, p. 144.

³³ **Gönenç**, Levent: "Türkiye'de Hükümet Sistemi Değişikliği Tartışmaları: Olanaklar ve Olasılıklar Üzerine Bir Çalışma Notu", içinde Başkanlık Sistemi, Ed. Teoman Ergül, Türkiye Barolar Birliği Yayınları, Ankara 2005, 1-12, p. 1.

The main argument developed within the scope of the search for an alternative government system in the past was as follows:³⁴ Turkey is a rapidly developing and dynamic country. Turkey needs to come to the fore – so to speak, break its shell – and overcome a series of burning social, political and economic problems among the countries where it is located and among the countries at the same level. Such a transformation project may only be realized by a “fixer” political power that takes and implements decisions quickly and smoothly. The parliamentary system, with its unstable and slow functioning structure, does not respond to Turkey’s need for “effective governance”. For this reason, as in the United States, the acceptance of the presidential system is essential for Turkey to seize the opportunities ahead and to reach the place it deserves in the civilization race.

According to Lijphart, there are two basic choices in the establishment of a democratic regime. One of these preferences is related to the electoral system, while the other is related to the government system.³⁵ Turkey, on the other hand, made its choice regarding the government system and replaced the parliamentary system with the presidential system inspired by the presidential system called the Presidential Government System with the 2017 Constitutional Amendment. This choice of government system in Turkey undoubtedly expressed a radical constitutional change in the political system. Although such a change was largely planned and transferred to political life by the political elite, it may be argued that it concerns the whole society when its scope and impact are taken into account.

The question to be asked at this point is to what extent the political elites, who hold power today, can influence other social actors that may come to power in the current political order in terms of system preference? Although it may seem like a constitutional construct of the legislative-executive relations, the choice of government system also concerns the formation and implementation of public decisions, and therefore also involves the society. In other words, the choice made does not only regulate the authority and influence of the political elite, but also includes social, political and legal demands. As such, the choice for a system of government must be based on a broader base in terms of democratic legitimacy. Therefore, the choice of government system requires a broad-based constitutional consensus. So, this requires a participatory constitution-

³⁴ **Gönenç**, Türkiye’nin, p. 1.

³⁵ **Lijphart**, Arend: “Constitutional Choices For New Democracies”, *Journal of Democracy*, V. 2, N. 1, 1991, 72-84, p. 72-74.

making dynamic in terms of providing the ground for reconciliation. Here, it seems essential to seek the consent of not only those in power or the political parties represented in the parliament, but also the parties outside the parliament and social actors.

As the type of constitution-making technique we mentioned above is not adopted, the 2017 Constitutional amendment suffers from legitimacy problems³⁶ in terms of both content and method.³⁷ These factors, together with those associated with the increasing mediatization and personalization of politics, are likely to make intersystem negotiation increasingly meaningless in the current system. It therefore raises a common concern among the political elites of mature democracies about the dysfunctionality of legislation and its consequences on the legitimacy of political institutions.

On the other hand, we must say that more recently, the Presidential System of Government did not constitute a status quo in terms of ensuring political stability, even though we know that it is not the nature of presidential institutions that causes instability. Because we can argue that there are many other factors in terms of political fiction elements – such as leader cult and personalization of power – in the total mass that determine how this system works. Let us also stress that in countries with a longer history of democratic rule, such as in Western Europe, the parliamentarism model, with all its potential variants, is more prevalent than the presidential model, despite the pressures to personalize political life in the modern world.

Democracy should become the only game played in the political arena and the rules of the game should be determined by the rule of law within the rule of law. As such, an established democracy must include the following elements:³⁸

- a. While socially active actors carry their will to the political arena, they should not engage in any activity towards the creation of an

³⁶ It should be said that Turkey's rule of law has been systematically stretched. To restore control, the government quickly declared a state of emergency, exerting a deterrent effect on popular opposition with limited political mechanisms. See **Kirişçi, Kemal/Sloat, Amanda**: “The Rise and Fall of Liberal Democracy in Turkey: Implications for the West”, *Foreign Policy*, 2019, 1-19, p. 5.

³⁷ This is not only expressed by the political elites in Turkey, but also abroad, the process is read like this. See **Seufert, Günter**: “Turkey Shift to Executive Presidentialism: How to Save EU-Turkish Relations”, *SÜDOSTEUROPA Mitteilungen*, 2018, 6-19, p. 11.

³⁸ **Linz, Juan J./Stepan, Alfred**: *Problems of Democratic Transition and Consolidation*, The Johns Hopkins University Press, Baltimore 1996, p. 5-6.

anti-democratic regime, should not spend their resources on this, should not resort to foreign intervention or violence.

- b. A significant part of the social base should believe that democracy is the most appropriate system and should make this a life practice.
- c. Active social forces must have agreed that all their contradictions and conflicts may be resolved in democracy, and an institutional tradition must have been established in this direction.

A “fully functioning democracy” includes the following criteria, which are fairly widely accepted here:³⁹ free and fair elections, freedom of speech and assembly, and respect for human rights. This also means that key policy makers can be held accountable (through free and fair elections) and irresponsible organizations such as the military, in particular, do not play a role in overall policy-making other than advising on security-related issues. A fully functioning democracy also means that there is little uncertainty about whether democratic rules and norms, however established, will be upheld (i.e., not overthrown).⁴⁰

In fact, it is not possible to say that these conditions cannot be met in both the presidential system and the parliamentary system. However, it is not possible to argue that this system is successful, except for the USA, which introduced the pure state of the presidential system and put it into practice. Indeed, although there are many elements that differ from the pure presidential system, especially in Latin American countries; it has been seen that the systems inspired by the presidential system here do not contribute to political and government stability, and they evolve into coups and dictatorships as a result of coups. It should be noted that the system implemented in Latin American countries is not exactly a presidential system, but the different political structure and party systems play a role in this.

In Turkey, we argue, regardless of the nature of the government system, that experiences of authoritarian rule and elite settlement or convergence are likely key explanations for regime-type differences. Again, without forgetting this fact, it is necessary to think briefly about the nature of the government system and especially the possibility of rationalized parliamentarism.

³⁹ **McLaren**, Lauren: “The Failure of Democracy in Turkey: A Comparative Analysis”, *Government and Opposition*, V. 46, N. 4, 2011, 485-516, p. 485.

⁴⁰ For an extensive study, see. **Dahl**, Robert A.: *On Democracy*, Yale University Press, New Haven ve London 1998, p. 35-44.

Parliamentarism can be seen as a flexible system in the sense that it provides an easy-to-use and relatively inexpensive mechanism to resolve conflicts between the executive and legislative powers. The set of institutions that can be developed under the title of the parliamentary system represents an “embedded” conflict resolution mechanism that does not exist in the presidential system. In case of disagreement, the parliament is likely to replace it with a government of its own choosing. In fact, according to a widely used model, parliamentarism can be seen as a single, continuous chain of authority and accountability from the electorate to parliament, government, and bureaucracy. In this model, the basic mechanism that keeps all interests neatly aligned is the possibility that society, through parliament, may dismiss the government at any time. Indeed, voters may dismiss deputies in general elections, and deputies may dismiss a government with a vote of confidence. In this sense, with few exceptions, parliamentarism scholars⁴¹ assume a structurally cooperative or at least conflict-free relationship between governments and parliaments; conflicts are temporary and are resolved by the built-in conflict resolution mechanism. In this context, it may be beneficial for Turkey to turn to this set of institutions, the existence of which should be sufficient to guarantee the peaceful functioning and survival of the political system.

This is the parliamentary system and its rationalized form. The rationalization of the parliamentary system should be considered in terms of establishing a “balanced” network of relations between the legislative and executive powers. As such, the tendency to strengthen one of the legislative and executive powers against the other should be realized by considering the brake and balance mechanism. Otherwise, it may go beyond the framework of the democratic state of law. However, in our opinion, this brake and balance mechanism can be achieved with rationalized parliamentary system tools. Indeed, a rationalized parliamentary system can establish a balance between the legislature and the executive in accordance with democratic criteria.

CONCLUSION

Recently, political elites have been making intense efforts to return to the parliamentary system in Turkey. In our opinion, here, above all, political elites are increasingly seeking advice on how to modernize their institutions,

⁴¹ **Cheibub**, Jose Antonio: “Constitutional Parliamentarism in Europe, 1800-2019”, *West European Politics*, V. 45, N. 3, 2022, 470-501, p. 470-472.

how to conduct and maintain close relations with citizens, and how to effectively perform their constitutional functions such as law-making, oversight and representation should seriously contemplate on on-path constitutional techniques in connection with the parliamentary system.

In our opinion, the constitution maker in Turkey should carefully examine the rationalized parliamentary system, especially in terms of guaranteeing the limits of executive action, as it will provide a more effective basis for longer-term governance in the context of the parliamentary system as an important choice.

Within the scope of a change in this direction, the choice of government system will have a validity in terms of the institutions and tools of the democratic state of law in the constitutional construct. The question of whether the scope of change is achievable in the constitution-making process must depend on the flexibility in the process needed and the acceptance of new rules, institutions and procedures by all key social and political actors.

As a result, in the rationalized parliamentary system, the main character of the parliamentary system is preserved, and the following solutions can be developed by taking into account the deficiencies in the current Presidential Government System:

- a. It should be noted that the Assembly has two main functions in Turkey. These are the law-making activity that reveals the main function of the TGNA and the control activity on the executive body. For rationalized parliamentarism to have its real function, the TGNA must have the essential and characteristic authority and influence.
- b. While returning to the parliamentary system, it may be functional for the TGNA to audit the executive organ by means of censure, parliamentary investigation, parliamentary inquiry, and general debate. In the Presidential Government System, some of them either do not exist or are almost completely ineffective. Therefore, the power and influence of both the TGNA and the deputies should be increased.
- c. Techniques for the rationalization of the system we have explained above can be adopted in order to strengthen the executive by making the legislature effective and especially for the establishment and functioning of the government within the parliamentary system.
- d. The 2017 Constitutional amendments brought with it a judicial order in which the President is very decisive. Indeed, the President is

endowed with some hegemonic powers, especially over the supreme judiciary. Accordingly, the President of the Republic has direct or indirect authority (through the Council of Judges and Prosecutors) to determine the members of the Constitutional Court, the Council of State and the Supreme Court. However, it should be noted right away that the judiciary must be independent under all circumstances, regardless of the government system; however, considering the intense powers of the President over the judiciary, which is essentially independent, it is seen that there is such an authority network among the powers that the brake and balance mechanism is dysfunctional. As a matter of fact, considering the decisive position of the President over the HSK, it should be said that he also has an influence on the judicial organs of the first degree. Therefore, if the parliamentary system is adopted, the balance between the executive and the judiciary should be well established. The map of the executive body's authority and influence over the judiciary should be improved in the context of the democratic state of law.

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