

COMPARATIVE ANALYSIS OF THE TURKISH PRESIDENTIAL SYSTEM WITH GOVERNMENT SYSTEMS INCLUDING SEPARATION OF POWERS¹

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Abstract: There are many debates on the “Turkish presidential government model (TPGM)” that propose radical changes in the Turkish administration system. Such discussions take its source from the dichotomies of the “unity of power-separation of powers” and the “presidential system-parliamentary system”. Until the constitutional amendment proposal of December 10, 2016 in Turkey the debate on the government system in Turkey has been publicized by the name of “presidential” or “Turkish type presidential” system, leading to the fact that the TPGM is in the presidential system category in terms of government systems based on separation of powers. However, in the text of the constitution proposal, many article on the relationship between legislative and executive reminiscent the parliamentary system. The aim of the study here is to show in what category the TPGM is related to the legislative-executive relations, from the general literature of constitutional law and politics.

Key words: Turkish Presidential Government Model, Unity of Power, Separation of Powers, Presidential System, Parliamentary System.

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1. INTRODUCTION

Government system debates on the Turkish agenda are usually on the axis of the presidential system. Especially after the elections in 2011, which resulted in the power of Justice and Development Party (AKP) acting alone for the third time, these discussions became more concrete by forming proposals and exposure drafts. In the debates of government system, the USA model was proposed. However, the year of 2012 can be expressed as a milestone in this context.

The recommendation system, which is referred to as the “Turkish type presidential” system, dominated the post-2012 government system debates. This concept has been used to express that the government system of any country will not transferred as its features and the presidential system will be reorganized within the framework of Turkish political and administrative culture. The model, known as “presidential model” till 2016, has been changed to “Turkish presidential government model (TPGM)” on December 2016.

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In this context, the focus of the work is the TPGM which is accepted in the referendum on April 16, 2017. The aim of the study is to explain in what category this model can take place in the context of legislative-executive relations using from the general literature about constitutional law and politics. Within the scope of this aim, the TPGM is analyzed comparatively with the concept of unity of power-separation of powers and presidential system-parliamentary system dichotomies.

2. THE UNITY OF POWER – THE SEPARATION OF POWERS DICHOTOMY

Government systems can be defined as the entirety of the sequence of rules and institutions applied in constitutional democracies and non-democratic regimes in terms of the formation, distribution and regulation of legislative and executive powers within the state. In this sense, the contemporary government system in a country has a narrower and more limited meaning than the political system in that country. Besides the government system, political system includes political parties, electoral systems, political culture, historical and sociological institutions and values, and economic infrastructure, in short, all institutions, rules and values in that country (Hekimoğlu, 2009: 5-6).

Thomas Hobbes is one of the foremost advocates of the unity of power in the history of political thought. According to him, the state -once it had been established by the people's consciousness, that is, after an appearance of mighty person or a committee would end the civil war and provide peace- had to be equipped with powers that would not be transferred to another person or a parliament, and not to be abandoned (Zabcı, 2013b: 447). In other words, Hobbes' understanding of sovereignty is absolute, so it's inalienable and unitary. On the other hand, Hobbes indicated that a single person, minority and majority group could be sovereign of a state but his personal preference is single person to be sovereignty. In other words, according to him, the authority of the monarch powers unite is the best government that can protect peace (Tannenbaum and Schultz, 2015: 210-1). Therefore, Hobbes, who believes that all the authority of legislative, jurisdiction and executive must be single handed, defends the concept of unity of power in this context.

On the other hand, Charles Louis Montesquieu, the theoretician and prominent advocate of the separation of powers concept, believed that power must stop itself to prevent abuse of power, and pointed out that the three powers must be gathered absolutely in the different hands (Zabcı, 2013a: 561). According to Montesquieu, there is a clear division of duty between legislative, executive and jurisdiction. Actually, each power is given separate hands is a necessity for the protection of political freedoms (Zabcı, 2013a: 559-60). Indeed, many of the modern democracies are governed by governmental systems based on the separation of powers principle. The separation of powers that refers to three functions of the state (legislative, executive and jurisdiction) should be entrusted to a separate institution of the state (respectively parliament, government and courts). The aim is to break apart the state power in a way that will keep the despotism away and defend freedom (Heywood, 2014: 401). Also, the executive solves from the legislative as an obstacle to freedoms so he chooses a strict separation of powers. In other words, he believes that the executive must be independent from the legislative.

One of the most important discussions in the politics and the constitutional law literacy is the extents of the legislative and the executive powers in the relation to each other and

how to establish them in government system and structures. In this framework, since Montesquieu, who introduced the “separation of powers principle”, government systems are categorized in reference to the reciprocal relations of legislative and executive powers. Thus, the governmental systems that can be exemplified in terms of theory and practice have a diversity of “unity of power” ranges from “separation of powers” to various types of variations. In the literature, the systems in which legislative and executive powers are gathered in a single organ are called “unity of power”, while the systems where powers are given to separate institutions and the powers used by these institutions are called “separation of powers”.

According to Maurice Duverger, the most prominent feature of democracies is their efforts to strengthen the legislative organ against the executive power. Under the different effects of national development, this effort has been changing gradually; presence has always been a minimum common (Özkol, 1969: 43). The historical examples also confirm this situation to a great extent. For example, in France the tendency to oppose the power of the executive is at its most extreme, not strong in the USA at that time. Even today in France a republican naturally keeps parliamentary votes against the government, there is no such situation in the comparable with USA. In fact, countries like France and England, which are the cradle of parliamentary democracy, reasons for supporting parliament, or legislative supremacy, can be summarized in two main groups. The first reason is that parliament is an institution established against monarchy and secures fundamental rights and freedoms by restricting the power of the monarch. The second reason is liberal capitalism, a judge in the 19th century, foreshadowed weak governments and considered defense and security only as state affairs. Thus, in the first example in Europe, except during the times of depression, every step taken by the legislative against the executive, foreseeing that the governments are weak and equipped with the minimum powers, was considered a new victory for democracy. If the democratic struggle in the USA is thought that it had been made against the British Royal Crown, it can be better understood why the people did not consider the USA executive organ established at the end of the national independence war as terrible cruel as it is in Europe (Özkol, 1969: 43-4). It is also a fact that the tendency to weaken the government in European democracies has not always responded to the requirements of certain economic and political conditions.

In the historical process, the excessive development of parliament’s superiority prevented the executive power from taking measures to solve important problems, eventually resulting in severe violence. In countries such as the England where constitutional systems are flexible prone to adhere to the soft and new situations, these depressions can be settled without a constitutional issue arising and strong executive organs can be set up that can take the necessary measures without damaging individual freedoms, countries such as France and Austria whose law systems are rigid have fallen into the arms of dictatorship. The new constitutions made after the destruction of the dictatorships have forgotten the weakness of the government and the authority that led to the dictatorship and carried only a reaction constitution, so the old libertarians were satisfied with the vision. Thus, the Second World War and development of technique has also affected political patterns, the strong executive in our understanding of democracy over time has become an important part of contemporary state administration. In other words, the “separation of powers” principle has become a dispensable condition for the protection of “fundamental rights and public freedoms” (Özkol, 1969: 45-6).

3. THE GOVERNMENT SYSTEMS BASED ON THE SEPARATION OF POWERS: THE PRESIDENTIAL SYSTEM AND THE PARLIAMENTARY SYSTEM DICHOTOMY

While the governmental systems based on “the unity of power” can emerge as an “absolute monarchy” or “dictatorship” by combining legislative and executive powers in the executive organ. These two powers can also come into being as “conventional system” by combining them in the legislative organ (YAZICI, 2013: 2). The government systems based on “the separation of powers” are confronted as “the parliamentary system”, “the presidential system” and “semi-presidential system” emerging as a hybrid third model between these two government systems, according to whether the separation of powers is soft or hard.

In “the parliamentary system”, the powers are divided in a soft and balanced manner, as the executive comes out of the legislative and these two organs can defeat each other’s legal assets through mechanisms such as “interpellation” or “dissolving parliament”. In “the presidential system”, the executive and the legislative powers are elected separately by the people, and the powers are severely and rigidly divided because they cannot defeat each other’s legal assets.

The parliamentary system is the result of political evolution in England in the 18th century. It created by the thought of supervising the sovereign was successful in the implementation process, to acquire legislative power by forming a parliament representing the people against the government. The parliamentary system initially has dualistic character, later developed against the King and therefore developed in favor of parliament. The parliamentary system has a form of constitutional government in which “executive organ exists from legislative and has political responsibility for the legislative organ”. The classical parliamentary system based on equality and equilibrium between powers, the executive organ is stronger than the legislative organ at the present time (Kahraman, 2012: 434).

The political irresponsibility of the President in the parliamentary system also means that the executive organ has two heads. On the one hand, the President is both the head of executive organ, and the representative of the unity of the state and the integrity of the country. The President of the state may be a King or Emperor coming from the royal family, or may be an elected President. He/She lacks executive authority other than symbolic authorities, such as representing the unity of the state and the integrity of the country. The President is politically irresponsible and cannot be dismissed by the parliament. In the parliamentary regime there is no procedure that he/she can do by oneself. The most important role of the President is to be the neutral arbiter, including the termination authority, in cases of disagreement between the legislative and executive organs.

In the contemporary constitutions, it seems that the prime minister has been granted more powers than the other ministers. The prime minister himself/herself designate ministers to work with and carries the responsibility of the government in the face of parliament. He/She may claim the President of the state to terminate the parliament if necessary and request a minister in the government to be dismissed. Political responsibility and termination authority, with the parliamentary system being the main

means of balance, the emergence of the political parties the balance between the organs has been distorted in favor of the executive organ.

The presidential system is a model of the state administration born and implemented in the USA. It is a system determined in principle in the negotiations of the founding assembly gathered in Philadelphia in 1787. Hence, it can be considered as a governmental system within its own system in terms of its institutions, political and social aspects, and the emergence and in particular the values of American political culture (Öztürk and Kurt, 2015: 51). Due to this feature, while the first reference source of other countries preferring this system is the USA Constitution, the vast majority of countries trying this system have achieved very different and unsuccessful results in terms of stability and democracy.

The presidential system can be defined as the President is head of the state and executive and he/she cannot be dismissed by legislative, he/she also has not authority of terminate the legislative organ. Generally accepted features to distinguish the presidential system are: i) The President, who is the sole owner of the executive power elected by the people. ii) The term of the legislative and the executive organ is fixed. iii) The Legislative and the executive organs do not have the legal tools to put an end to their existence. iv) The executive organ cannot terminate the legislative organ also the legislative organ cannot dismiss the executive organ (Tunçkaşık, 2015: 1).

In the presidential system, which is also defined by the rigid separation of powers, the principle of independence is valid to come into and functioning of the legislative and the executive organs. However, when there is a need for coordination in the state administration the need to equilibrate this separation to some extent was appeared. In the American tradition, this mechanism, known as “check and balance”, gives the authority to two organs partially controlling each other (Tunçkaşık, 2015: 4).

Moreover, in the presidential system, the President, representing a single executive organ and receives legitimacy from public directly or quasi directly via elections, and President remains in office for a determined period of time. He/she does not have any responsibility for the parliament. Unlike parliamentary cabinets, the President is empowered, directly and solely, without the intervention of the legislative organ, in the appointment and dismissal of his cabinet.

As a consequence of the singularity, the President is head of the state and the representative of all people, as well as an open partisan and political alternative, headed by the head of government (Gül, 2011: 595). Therefore the position as head of the state in the presidential system is quite different from the President of the parliamentary system in the unauthorized and irresponsible position. The President, more effectively than head of the state, carries out the function of head of the government, as a matter of this second attribute, although it is not the leader of a disciplined party, it cannot ignore the fact that it continues to be a representative of an open political tendency. As such, the result is how useless it is to expect the President to have a moderating and conciliatory function in the face of any executive-legislative conflict (Gül, 2011: 598).

All these facts show that the presidential system has some strengths and weaknesses like other systems. The some forefront is determined by each country's own political, social and economic conditions. The presidential system has come to the fore in the USA with strengths, weaknesses coming from in Latin America. Similarly, the example of the parliamentary system in the England case with strengths, Eastern European examples are influenced by the critical aspects of the system. The dominant view is the

fact that one country has a healthy political system, preferring a certain government system, depends on the development of mitigating mechanisms by identifying the weaknesses of the government system it has in its social conditions (Tunçkaşık, 2015: 17).

To sum up, the precondition for the separation of powers must be established in order for a debate to take place within the framework of the parliamentary system-presidential system dichotomy. The degree of the separation of powers, in particular, determines the governmental systems. The ability of the executive emerges from the legislative organ, and the ability of the two organs to put an end to each other's duties, is expressed as the soft separation of powers. On the other hand, the presidential system, symbolizes the rigid separation of powers in the context of the fact that the executive does not dismiss of legislative if mutual termination is not possible.

4. THE ADOPTION IN THE REFERENDUM ON APRIL 16, THE TURKISH PRESIDENTIAL GOVERNMENT MODEL

The government system in Turkey has been under the discussion since the 1961 Constitution, which foresees the soft separation of powers, has entered into force. The relatively weakness of the executive has been expressed by many Presidents and Prime Ministers. As a matter of fact, in the reforms of the government system, from 1961 onwards, the movements to strengthen the separation of powers are striking. The 1971-73 Constitutional Amendments, the 1982 Constitution and the 2007 Constitutional Amendments stand out from these movements.

The reform demands, brought to the agenda by a number of politicians for various reasons, are often discussed on the axis of the presidential system. Although the search for reform has been on the agenda of Turkey for many years, it seems that the steps in this direction have begun to become concrete after the elections on June 12, 2011. In this period, "the Constitution Conciliation Commission" was established under the parliament of the Turkish Grand National Assembly (TGNA) and the presidential system discussions were coordinated with the aim of creating a new civil constitution. However, the goal of the commission to make a new constitution interrupted because of Gezi Park Incidents, December 17-25 process and terrorist attacks by various organizations have been in the process.

The year of 2012 is a turning point for the debates on the presidential system, which has been on the agenda for some time by some politicians over the last forty years. The presidential system debates as much as this turning point did not go beyond being a weak agenda suggestion by politicians. However, on November 2012, the AKP's proposal for a draft text containing the presidential system for the Constitution Conciliation Commission constitutes a milieu in terms of elaborating an alternative government system of a political party in Turkey. Another important feature of the proposal is to present the concept of "the Turkish Type Presidential System" to the Turkish constitution literature. The previous presidential system debates were often on the axis of the American Presidential Model. Indeed, many politicians who proposed the presidential system referenced their arguments with the characteristics of the USA system. However, the draft, which was uncovered in 2012, is designed as a unique government model in the light of the Turkish political and administrative culture.

The draft presented to the commission on November 2012 even though it is not legislated has a great importance with regard to the transfer of government systems to the agenda of Turkey. The discussions and criticisms made in this context played an

important role in the developing an idea of the text on December 10, 2016, “the Law Proposal on Amendments to the Constitution of the Republic of Turkey” which was submitted to the Presidency of the Assembly with the 316 AKP members’ signatures composed of 21 articles.²

Akgün (2017: 6) summarizes the differences between 2012 and 2016 texts:

- The wider segments can show the Presidential candidate.
- The introduction of a more feasible method of operating criminal responsibility.
- The assembly can accept the laws send back by simple majority instead of qualified majority.
- Strengthening the secondary position of the Presidential decrees against the law.
- Selection of members of the Council of Judges and Prosecutors (HSK).

Table 1: The First 18 Articles of the Constitutional Amendment Proposal of 2016

Offer Clause	Constitutional Article	Regulated Field	Subject
1	9	Jurisdiction	The neutrality of the courts
2	75	Legislative	Increasing the number of deputies
3	76	Legislative	Changing parliamentary selection criteria
4	77	Legislative Executive	TGNA and President election period
5	78	Legislative	Spare Member of Parliament and postponement of elections
6	87	Legislative	Duties and authorities of the TGNA
7	98	Legislative Executive	TGNA’s ways of obtaining information and control
8	101	Executive	Presidential candidate and election
9	104	Executive	Duties and authorities of the President
10	105	Executive	Criminal responsibility of the President
11	106	Executive	Representatives of the President, Vice President and ministers

² When sent to the Turkish Grand National Assembly, the draft, consisting of 21 articles, was reduced to 18 articles. Article 78, which regulates spare Member of Parliament; Article 123, which regulates the establishment of the public entity by the presidential decree; Article 126, which regulates the establishment, authority, duties and responsibilities of public institutions within the scope of central government, with the decision of the President of the Republic, are removed from the amendment text.

12	116	Legislative Executive	Renovation of parliamentary and presidential elections
13	119	Executive	State of emergency
14	123	Executive	The integrity of administration and public entity
15	126	Executive	Establishment of central administration organization
16	142	Jurisdiction	Establishment of courts (military courts)
17	159	Jurisdiction	Regulations for the Council of Judges and Prosecutors
18	161	Executive	Budget and final account

Apart from the above mentioned provisions, the draft constitution of 2012 and the constitutional amendment proposal of 2016 are similar. The same system of government has been adopted in both proposals. It would not be an ambitious statement to express that the 2012 constitutional draft constitutes the framework of the 2016 constitutional amendment proposal. The most noticeable difference is that the phrase “President (*Başkan*)” in the 2012 text is to be formulated as “President of the Republic (*Cumhurbaşkanı*)” in 2016.

Table 2: The Last 3 Articles of the Constitutional Amendment Proposal of 2016

Offer Clause	Constitutional Article	Regulated Field	Subject
19	8, 15, 17, 19, 88, 93, 108, 117, 125, 146, 148, 154, 155	Legislative Executive Jurisdiction	Exclude expressions from the text of the Constitution
	73, 108, 117, 118, 124, 127, 131, 134, 137, 146, 148, 150, 151, 152, 153, 158, 166, 167	Legislative Executive Jurisdiction	Amendments expressions to the Constitution
	89, 108	Legislative Executive	Expressions added to the text of the Constitution
	67, 91, 99, 100, 102, 107, 109, 110, 111, 112, 113, 114, 115, 120, 121, 122, 145, 156, 157, 162, 163, 164	Legislative Executive Jurisdiction	Repeal articles

	82/2, 96/2, 117/3-4, 125/2, 127/3, 150/1	Legislative Executive Jurisdiction	Repeal articles subsections
20	Provisional Article 21	Legislative Executive Jurisdiction	Determination of the rules of the transition period in case of entry into force of the Act
21		Legislative Executive Jurisdiction	Regulation of effective dates

The amendment to the Constitution, which completed the commission process on January 4, 2017 and was approved by the final vote of 339 affirmative votes on January 21, 2017, was approved by the President on February, 11 2017 and legislated for referendum. The text of the law was adopted with a rate of 51.4% in the referendum held on April 16, 2017.

5. THE PLACE OF THE PRESIDENTIAL SYSTEM IN THE CONTEXT OF THE LEGISLATIVE ORGAN AND THE EXECUTIVE ORGAN RELATIONS BETWEEN THE GOVERNMENT SYSTEMS BASED ON THE SEPARATION OF POWERS

The text of the constitutional amendment, which leads to a change in a total of 69 articles of the Constitution, does not include a directive to the separation of powers or the unity of power. From a technical point of view, it is possible to find evidence that the separation of powers is becoming rigid. Especially when the executive organ is single headed and independent from the parliament, the same person cannot work together with the legislative and the executive, and the separation of powers in the sense that the executive cannot participate in legislative work seems to be relatively hardened compared to the previous system.

On the other hand, the opening of the President to be a political party member, the understanding of the dominant leader in Turkish political culture and the dominance of chairman in the political parties, has the potential to damage separation of powers. The fact that he/she is a political party member in the Turkish political life in which disciplined political parties existed brought with the suspicion that the President could increase sovereignty over the legislative. Thus the system in which the powers would unite in the presidency.

For example, Can (2016) states that only the executive-centered model of government has been introduced, in which the possibilities that the parliament can check and balance with the presidential system have been abolished. Gözler (2016), in parallel with this view, claims that the model is essentially nothing more than a “the unity of power system which the powers unite on the hand of the President”.

Table 3: The Comparison of Basic Characteristics of the Presidential System and the Parliamentary System

Fundamental Features of the Presidential System	Fundamental Features of the Parliamentary System
The executive organ is single headed	The executive organ is dualistic
The executive organ is directly elected by the public	The executive is not directly elected by the public
The executive does not rely on the legislative's confidence	The executive rely on the legislative's confidence
Additional Features of the Presidential System	Additional Features of the Parliamentary System
The executive cannot terminate the legislative organ	The executive may terminate the legislative organ
The same person cannot take part in both legislative and executive	The same person can take part in both legislative and executive
The executive organ cannot participate in the work of the legislative	The executive organ can participate in the work of the legislative

In terms of the politics and the constitutional law literature, the main features of the presidential system and the parliamentary system are generally characterized as shown in Table 3 (Gözler, 2008; Türköne, 2008; Gözübüyük, 1986; Yayla, 2015):

In consideration of these features, the TPGM can be regarded as a presidential system in the context of its inability to participate in legislative activities and elections and the structure of the executive organ. Another aspect of the model that resembles the presidential system is that the same person cannot take part in both legislative and executive. However, the model resembles a parliamentary system in the sense of reciprocal dissolution and the executive's reliance on legislative confidence.

The fact that the term of abolition does not devolve in the text of the constitution and its inclusion in the text on the name of renewal of elections does not change the fact that both organs can terminate each other's duties. Moreover, although the vote of confidence has been abolished by the new regulation, this does not mean that the executive organ is not based on the trust of the legislative organ. There is no difference in terms of implementation, although there is a meaningful difference between the

assembly's decision to make an early election and the presidential election to be renewed and the assembly to end the President's duty by vote of confidence.

Table 4: The Place of the TPGM between the Government Systems Based on the Separation of Powers

The Turkish Presidential Government Model	Presidential System	Parliamentary System
The executive organ is single headed	x	
The president elected directly by the public	x	
The president rely on the legislative's confidence		x
The President may terminate the legislative organ		x
The same person cannot take part in both legislative and executive	x	
The president cannot participate in the work of the legislative	x	

Gözler (2016) states that the proposed model is not a presidential system in terms of the legislative-executive relations, the system is similar to the parliamentary government system and the fact that the executive is single headed cannot meet the rigid separation of the legislative and the executive, and the system revealed by this action can be called as "parliamentary system without the Prime Minister".

Moreover, Burhan Kuzu constitutional law professor, one of the prominent advocates of the constitutional amendment proposal, as showed below stated that the President's abolition authority in his book is incompatible with the presidential system (Kuzu, 2016: 162):

There is no presidential model other than the USA model in fact in the world. Examples are South America. But those countries do not have presidential typology in North America. What did he do? You are looking at the Constitutions, "the President abolishes parliament if the following conditions are met"; it's destruction. It's a dictator after you've been hitting and you're kicking the parliament. It's what happens when you put it. They have given the legislative authority to the President, just as it is in the parliamentary system, absolutely not.

In sum, one of the main features of the presidential system is that the duty term of the legislative and the executive are fixed. In other words, these powers cannot put an end to each other's duties. However, in the text of the constitutional amendment, it is stated that the powers can abolish each other's duty term. From this point of view, the TPGM

resembles parliamentary system rather than presidential system because of this specific feature.

6. CONCLUSION

When the new model of government is examined within the framework of the separation of powers-unity of power dichotomies, it should be said that it is a system of government based on separation of powers technically. Yet the fact that the President is a political party member and the power of political party leaders in the Turkish political culture makes it difficult to distinguish between the executive and the legislative powers in the sense of the separation of powers. In a society where disciplined parties are involved in politics, it is possible that a leader of a political party head of the executive can also dominate the legislative. In the case of this possibility occurring, the executive and legislative will be open to debate the claims of the members of the judiciary to be determined by the head of the executive. In short, although the new model is considered in terms of technical separation of powers, there is a possibility that it may lead to the unity of power in some aspects.

When the TPGM is examined within the framework of the parliamentary system-presidential system dichotomy, it appears that the executive has the features of the presidential system from the standpoint of being single headed, elected by the public, out of the legislative, and cannot participate in the work of the legislative. However, legislative and executive elections may be concurrent and the organs may terminate each other's duties, loosening the separation of powers and simulating the system in the parliamentary system.

Consequently, the TPGM has introduced a unique system that has not been tested and has never been encountered in other societies. Although in the public opinion is lanced as a presidential system based on the separation of powers, both the separation of powers-unity of power and the position in the presidential system-parliamentary system dichotomies are ambiguous.

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