

The Committees in the Turkish Parliament: Existing Problems and Solutions after 2017 Constitutional Reform

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Abstract: Turkish Parliament, namely Grand National Assembly of Turkey (GNAT) works for a very long time in each legislative period. Despite this long and exhausting work performance, the need for the new laws has increased in time. An important reason for this low degree of productivity is the committee stage that is an important part of legislative process in GNAT. First of all I will try to explain the problematic aspects in the committees that are an important reason of unproductive legislative process in GNAT. Secondly Turkey has experienced a major Constitutional reform recently, in 2017. The existing parliamentary system was replaced by Turkish Type Presidential system by the constitutional amendments of 2017. These amendments definitely will effect working procedure of GNAT. I will concentrate on these amendments and the probable effects of them on the committees. Finally I will try to give some recommendation that may be useful in case of any amendment in Rules of Procedure (İçtüzük) of GNAT.

Keywords: Committee, Parliament, Grand national assembly of Turkey (GNAT), Rules of procedure, Constitution

Introduction

Turkish Parliament, namely Grand National Assembly of Turkey (GNAT) is under a heavy workload during each legislative period. Therefore it has to work very long times in its each legislative day in order to overcome this heavy workload. When compared to contemporary parliaments, this heavy workload can be seen more clearly. According to a survey conducted in 2002 (İba, 2006, s. 100), the GNAT issued 555 laws in each legislative period.. For this reason it was called as a legislative factory. Despite these lengthy working times, however, the need for new legislation has increased steadily over time. In this case, this question becomes inevitable: despite the long working hours why the need to make new laws does not decrease? The answer to this question should be sought in the RP, which includes an inefficient and unreasonable method of work. GNAT proceeds according to its Rules of Procedure (RP) or Standing Orders (SO) (İçtüzük), which entered into force in 1973. This RP was the result of a legislative reform under the conditions of that time, and divided the legislative process into two main phases, the committee phase and the general assembly phase. Both phases include some problematic aspects. I will focus primarily on the problematic aspects in the committee stage. But concentrating on committees may cause us to ignore the fact that they are affected by the whole system they are part of. In every country, the committees fulfill their duties in a different way, and the reason for this disparity is the different nature and status of the assemblies in which these committees are located. Therefore in judging the work and structure of the committees, we always have to take into account the institutional system to which they belong (Wheare, 1955, s. 2-3). So, first of all I will focus on the committee phase, but when necessary I will also refer to the general assembly stage.

The problematic aspects of the committee stage can be divided into three groups: (1) repetition problems (2) domination problems and, (3) civic participation problems.

The first group of these aspects stems from repeating each other's work and actions by the legislative actors. Therefore, this first group will be called as repetition problems. Repetition problems may appear between committees and General Assembly and among committees.

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According to the RP, the final decision authority is the General Assembly and the committees only prepare a report for the final decision authority: Commission reports are only a basis for decisions of the General Assembly. As Wheare pointed out (1955, s. 6) in fact, the notion of a committee generally includes inherently the idea of to be derived or to be secondary or to be in a dependent status. A committee lacks original jurisdiction; it acts on behalf of another body and it is responsible to another body. However, being secondary does not mean to be fully repeated by the general assembly, nor does it mean that all the final decision should be given by the general assembly. For example, there is a division of labor and cooperation between the committees and the general assemblies in the Spanish Parliament or the British Parliament. In both countries, the committees may be authorized by the general assembly to make final decisions, and in both of them committees have important competences in shaping the laws. For this reason, it can be argued that although the committees are in a secondary or dependent status in these two countries, they share the legislative burden with the general assembly. In Turkish Parliament, by contrast, it can be said that the work done in the committees is completely repeated by the general assembly. This is the first part of repetition problem in GNAT.

The second part of repetition problem is among committees. RP divides the committees into two group according to their authorities and responsibilities: Main and secondary committees. The main committee is responsible for all phases of the text, including the plenary session; whereas the secondary committee is obliged to give only its opinion to the main committee about the whole text or some parts of the text. In other words, a secondary committee only assists the main committee to make its decision. This regulation was added to the RP during RP reform of 1996. The aim of the regulation was to create a division of labor and cooperation among committees. The logic behind the regulation was: (1) Each committee would debate the part of the text that is in its jurisdiction and (2) All the opinion would be united by the main committee. But this logic of the regulation did not operate in practice and the aim of the regulation could not be succeed because secondary committee did not give a detailed opinion to the main committee and the main committee did not take into account the opinion of the second committee.

Establishment of the committees is the second group problematic aspects. This group of the problems is due to domination of the majority party in the committee. For this reason, this second group will be called as domination problems: (1) According to RP (art. 11) membership in a committee is open only for political party groups and it is necessary to have at least 20 deputies to form a political party group (Constitution, article 95). Therefore, political parties that do not have 20 members are unable to form a political party group and members of such political parties cannot be member of the committees. Likewise, the independent members of the parliament cannot be members of a committee. On the one hand this leads over-representation of the political party groups in the committees and on the other hand to the loss of power of the political parties that cannot establish a political party group in the parliament. Because, when political parties that cannot form a group are not represented in the commission, their rights are used by the political party groups. (2) The administration of the committees belongs to majority party in the parliament. Each committee has a bureau which consists of four persons: chairperson, vice-chairperson, spokesperson and secretary. According to RP (art. 24), upon completion of the election of the members, the committees are called for meeting by the Speaker of the GNAT. In the meetings, each committee elects its chairperson, vice-chairperson, spokesperson, and secretary. Quorum for this election is the absolute majority of total number of the committee members. The election is conducted by secret ballot. The vote of the absolute majority of the members present is required to be elected. As a result of this rule, in every committee the ruling party elects its members as the president, vice-president, spokesperson and secretary. This means that the ruling party may be fully in control of the committee administration. When the government dominates the committee through its majority in the parliament and when the voice of the opposition in the committee is restrained, the committee loses all its specialty. In Wheare's words, we may ask of a committee not only: 'Is it doing its job and is it doing it well?' but also 'Is it doing the job?' ...If we find that in fact the committee is a mere screen behind which somebody else is performing its function, we must conclude that the committee is not doing its job. (Wheare, 1955, s. 10)

The third problematic area is civic participation in the committees. This last group of the problematic aspects will be called participation problems. As mentioned above the RP entered into force in the 1970's, and in those years the concept of citizen participation was not common to the states. Therefore, the RP, naturally, did not regulate citizen participation. But especially after the activation of the process of European Union (EU) membership, the participation of Non-Governmental Organizations (NGO) or Civil Society Organizations (CSO) became an important matter in the negotiation period because it was a vital element of democratic legislative process. That's why although there was no any rule about it in the RP, committee chairmen started to invite NGO representative to the committee meetings. However, the absence of a written rule in this regard in the RP leaves the civil society's participation to the initiative of the committee chairman. Therefore, it can be

said with ease that there is no systematic NGO participation in the committees and this is one of the major obstacles to the securing of a democratic legislative process in the committees.

As I mentioned above, in this work I will first focus on the problems that may arise in the committees and then I will discuss some of the general issues that are directly related to the General Assembly and indirectly related to the committees. These general issues are (1) bag bills, (2) basic laws and, (3) the bills in the appearance of the proposals. The reason for the emergence of these concepts is the same: accelerating the legislative process. In fact, modern parliaments may use rationalization techniques that allow more qualified laws to be extracted in a shorter time. However, shortening the legislative process in such a way as to remove democratic processes may result in the issuing of unqualified laws. I will try to show that the concepts mentioned here are concepts that prevent the issuance of qualified laws by accelerating the legislative process. There is no doubt that this situation negatively has affected the legislative process in the committees.

One of the leading aims of this work is to develop proposals for the construction of a democratic legislative process that allows more qualified legislation to be issued with more rational methods. For this aim, some recommendations will be tried to be presented at the end of the study. However, before the presentation of these recommendations, it is necessary to mention two separate amendments to the Constitution and the Rules of Procedure in 2017. These amendments have made significant changes in parliament's working procedures and they will make further changes after the new constitutional amendments that enter into force in 2019. Therefore, after the changes in the new RP, which entered into force in 2017, and the amendments to the Constitution, which will take effect in 2019, have briefly examined here. Finally, the effects of these amendments on parliament's activities has been tried to be revealed.

The Problematic Aspects in the Committee

There are a wide variety of the committees in GNAT. These committees can be grouped according to different criteria (Bakırcı, TBMM'de Komisyonların Yapı ve İşleyişi: Sorunlar ve Çözüm Önerileri, 2011, s. 114-115):



Figure 1. Committees in GNAT¹

(1) *Legal basis*: The Plan and Budget Committee and the Investigation Committee are regulated by the Constitution itself due to their influence on political stability. Some Commission, such as the EU Harmonization Committee, Petition Committee and the Human Rights Committee, have been established by law in order to establish direct contact with citizens. Other standing committees, such Justice Committee, Interior Affairs Committee, Constitutional Committee are established by RP because they are just related to inner working of GNAT.

(2) *Continuity*: Some of the committees in the GNAT are permanent (standing), and some are temporary committees. Research and inquiry committees are temporary committees because they have work only for a certain period of time after being established. Other committees are permanent or standing committees, all of which are listed in article 20 of the RP.

(3) *Function*: The vast majority of the committees can only discuss draft bills and proposals, which are referred to them by the Speaker; they cannot hold meetings and negotiations without such a bill and proposal; they cannot be engaged in matters other than those assigned to them. On the contrary, some committees, such as the petition committee, cannot discuss the draft bills and the proposal. Some committees, such as the human rights committee, can perform both functions.

(4) *Competence*: According to the article 23 of RP, *the committee whose report will constitute the basic document for the Plenary debates is called the primary committee. Secondary committees are those that present their opinions on the parts or articles of the matter, within the remit of the committee.*

Although the committees differ from one another in various ways, the problems addressed in the introduction are applicable to all kind of the committees. Now these problems can be examined more closely.

Repetition Problem

The first problem in the committees is the *repetition problem* and this problem may arise in two dimensions: (1) between the General Assembly and the committees, (2) between the committees themselves.

Repetition problem between the General Assembly and the committees

All the above mentioned committees are conducting preparatory work on behalf of the General Assembly and the General Assembly is the final decision authority. In fact, in every parliament, committees are in secondary positions compared to the general assemblies and as Wheare noted (1955, s. 6) the notion of a committee generally includes inherently the idea of to be derived or to be secondary. However, being in a secondary position may not have the same meaning in every parliament. There are many examples in different parliaments.

For example although the committees are in a secondary position in the Spanish Parliament,

(1) some of its authority may be transferred to the committees as the ultimate decision maker and,

(2) not all of their work needs to be repeated by the plenary.

According Parliament's RP:

Full legislative authority of Committees

Section 148

1. The decision of Congress delegating full legislative authority to committees shall be presumed for all bills that may constitutionally be delegated,...

According to the article 149 of the RP

...before the debate in committee takes place, the full House may reserve for itself final adoption, upon the proposal of the Bureau after consultation with the Board of Spokesmen.

The evaluation of these two rules yields the following result: The General Assembly can transfer final decision making authority to the committees provided that the authority can be withdrawn at any time by the General Assembly.

According to article 110 of the RP *after a bill has been published, Members and parliamentary groups shall be allowed a term of fifteen days in which to propose amendments thereto.* Article 117 includes that, *within forty-eight hours of conclusion of the (Committee) report, parliamentary groups shall make known by notice addressed to the Speaker any dissenting opinions and amendments defended by them and voted upon in the committee, but not included in the report, if they intend to defend them again on the floor of the House.* As understood from these two rules, the process of the amendment starts at the committee stage and continues in

the General Assembly. The General Assembly has no authority to re-negotiate an amendment adopted in committee. This means that each organ has a duty in the legislative process and it is forbidden for these two organs to repeat the same act. All the objections should be done in the committee and the plenary can only negotiate unresolved amendments in the committee stage. (Bakırcı, 2014, s. 100)

As a result, it can be said that in the Spanish Parliament, the committees and the General Assembly work in close cooperation and division of labor, and that the committees share the burden of the General Assembly.

Another example that may be given for the cooperation and division of labor between General Assembly and the committees is the British Parliament. There are three readings and five stages in the legislative process there and each reading and stage is based on the preceding one: *First reading* includes formal introduction of the bill; in the *second reading* principles of the bill are considered and a vote is taken; in the committee stage a standing committee scrutinize the bill in detail; in the report stage chair of the committee reports to the House on the committee's deliberations and finally in the *third reading* and vote the bill passes/does not pass from the House. (Beale, 1997, s. 16)

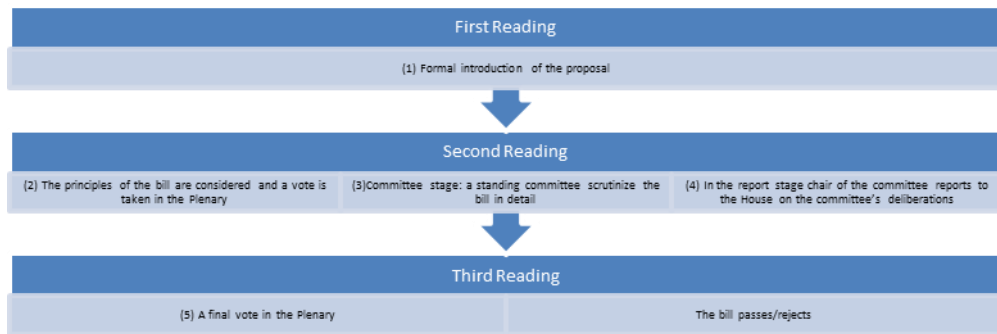


Figure 2. Stages of the legislative process in the British Parliament

As can be seen, the legislative period begins with the first and second readings in the General Assembly and then the bill is sent to the general (standing) committee after reaching consensus on the principles of it.ⁱⁱ After the committee finishes its work, the bill is submitted to the General Assembly for the amendments that was submitted, but not accepted in the committee.ⁱⁱⁱ Therefore, it can be said that the committee and the general assembly phases in the British parliament are part of an indivisible whole process in which they complete each other. The proceedings in committee are the most important part of parliament's consideration of bills; they absorb most of the time spent on legislation. (Griffith, Ryle, & Wheler-Booth, 1989, s. 231)

British system is so rationalized that whole House sometimes may function as a committee debating annual financial bills, bills of constitutional importance, bills so unimportant as not to warrant the creation of a general committee to consider them.^{iv} (Bradshaw & Pring, 1981, s. 270)

These two examples, the Spanish and British examples, show that in the rationalized parliaments, the committees share the burden of the general assembly and help fulfill and complement the work has to be done there.^v

These examples are sufficient to make more visible the problem in the GNAT because there is no similar cooperation between the general assembly and commissions in the GNAT and the General Assembly has to repeat once more the work that was done the committee. The natural consequence of this situation is that it is crushed under heavy workload because all the work has to be done alone. The solution of this problem is to distribute the works between the committees and the General Assembly by making amendments in the Rules of Procedure and to prevent duplication of the work that has done in the committees. Thanks to this method, committees will become important actors in the legislative process like the General Assembly and the General Assembly will have sufficient time to issue the required laws.

Repetition problem among committees

As a general rule, in any parliament, each committee must discuss a bill that falls within the scope of its mandate, and each proposal must fall within the jurisdiction of a particular committee. Sometimes, however, the same proposal may enter the jurisdiction of more than one committee. In this case, determining which

commission is authorized becomes a problem. This problem can become very serious especially in parliaments that have accepted the bag law^{vi} mechanism because the bag laws, by definition, contain more than one law. In the GNAT, if a bill involves provisions that are related to different laws, it has to be discussed in the different committees that are competent in this respect. In 1927 RP, i.e. in the first RP of the GNAT, although bag laws were not known, a fairly reasonable solution was envisaged to this problem. Then, it was possible to establish temporary or mixed committees if a bill had articles that are related to more than one law (art. 25). Mixed committees were composed of different permanent committees whereas temporary committees were composed of MPs who may or may not be member of a committee. Moreover, the General Assembly was authorized to increase the number of members of a committee temporarily. Therefore, this issue was not a problematic area in the period of 1927 RP. The 1973 RP changed this rule and became a source of a new problem. According to article 23 of 1973 RP the main committee was *the committee whose report was the base for the plenary debates*. Although this rule did not define secondary committee, it implied the existence of secondary committees or other committees than main committee. In the implementation period of this rule, the Speaker, in practice, appointed one main committee and one or more committees for each bill or proposal. The bill was referring to the first committee determined by the Speaker and it was expected to be discussed by this committee. After completing the first committee's negotiations, the draft bill, with the first committee's report, was sending to the second committee in line. After completing the second committee's negotiations, the draft bill, with the second committee's report, was sending to the third committee in line, and so on. Each committee was proceeding on the basis of the report of the previous committee. Therefore, there was no risk that the work of the previous committee would be ignored. The problem was that the main committee had to wait for all the secondary committees to finish their work because in order for the text to come to itself, all committees before it had to complete their negotiations. This led to the complaints of the main committees because the main committees had to either wait too long for the report of the secondary committees or the main committees never negotiated the bills because secondary committees did not complete their negotiations on the text. In order to find a solution to this problem, a serious change was made in the RP amendments made in 1996^{vii}. After 1996 amendments, according to new article 23 of RP, *the committee whose report will constitute the basic document for the plenary debates is called the primary committee. Secondary committees are those that present their opinions on the parts or articles of the matter, within the remit of the committee*. The main difference of this regulation from the old one is that the Speaker refers the bill to the both of the committees at the same time and all the secondary committees have ten days' time limit to complete their negotiation. Ten days later the main committee is able to use its powers without waiting for the reports of the secondary committees. Thus this amendment had solved the problem originates from 1973 RP. However, after this change, a more serious problem raised: It is true that the main the committee has no obligation to wait the report of secondary committee reports after ten days, but at the same time it is also true that the main committee has no obligation to take into account the views of the secondary committee. Because, according to the new regulations, the main committee does not have to carry out its negotiations on the report of the secondary committee. And in practice, the main committees, -on the grounds that serious and rigorous work has not been done by the secondary committees- did not take into account the views of the secondary committees; secondary committees, -on the grounds that their views will not be taken into account by the main committees- did not make serious and rigorous work. This is a vicious cycle, and because of this vicious cycle, the rule has lost its ability to be implemented. As a result, the new system is locked for most of the committees and regulations of updated Article 23 generally means a loss of time for the GNAT (Bakırcı, 2011, s. 127-130). The main purpose of the amendment of article 23 was that each committee should submit its opinion on issues falling within its field of expertise and that these opinions should be consolidated by the main committee. Since the secondary committees either offer no opinion or offer no persuasive opinion, the work they do is repeated in each case by the main committees. The result is repetition problem among committees. Now some examples of European countries, i. e. Spanish and British, can be examined in order to make suggestions for solution of this problem.^{viii}

In the Spanish parliament, there is no any distinction such as the main committee and the secondary committee, and there is no need to make such a distinction. In this case it is necessary to ask the following question: What will happen if there are two committees related to the same bill? In other words, what will happen if a bill falls within the jurisdiction of two committees? The RP of the Spanish Parliament have foreseen highly reasonable solutions that make these questions unnecessary. (Bakırcı, 2014, s. 38)



Figure 3. Committees in the Spain Parliament^{ix}

Solution 1. Replacement of the committee members:

According to article 40 of the RP:

Parliamentary groups may replace one or more of their members on a committee by any other member or members of the same group, upon prior written notice to the Speaker of Congress. If the substitution is for a specific matter, debate or meeting only, notice shall be given verbally or in writing to the Chairman of the committee and if in such notice it is stated that the substitution is a purely contingent one, then the Chairman shall admit as a member of the committee either the substitute or the original member.

As it can be seen, every parliamentary group can change its member(s) of a committee permanently or temporarily. This opportunity gives political party groups the right to collect and rearrange their expert members in any permanent committee. Since every political party has the right to appoint relevant members to the relevant standing committee, it is no longer necessary to refer a bill to different standing committees. The expertise of the different committees can be reassembled under a specialized committee when necessary. Thus, instead of moving a bill between committees, it is preferable to move the members of the parliamentary group among the committees.

Solution 2. The right to submit amendment for all the MP:

According to article 110 of the RP:

1. After a bill has been published, Members and parliamentary groups shall be allowed a term of fifteen days in which to propose amendments thereto, in writing addressed to the bureau of the committee...

Clearly, in the Spanish Parliament, not only the members of the committees but also every MP have the right to submit amendment. Therefore, it can be said that there is no big difference between the members of the committees and MP in terms of participation in the legislative process in the committees^x. When necessary, all MP's may come to a committee and make active contributions through the amendments. Therefore, in order to ensure the participation of expert MPs, there is no need to refer the bill to all committees. Any MP who thinks he/she has a certain level of expertise can go to a standing committee to submit an amendment. Thus, instead of moving a bill between committees, it is preferable to give the right to submit amendments to all MP's, in all committees.

Solution 3. Prohibition of bag law

Bag laws should not, in fact, be considered a category in the classification of laws. In teaching, bag laws are not regarded as a kind of law. For this reason, there is no need to set a rule in this regard in order to ban bag laws. In this sense, the RP of the Spanish Parliament does not explicitly contain any rules prohibiting bag laws. However, in the RP, there are indirect provisions related to this prohibition. According to article 110/3 *amendments to the whole bill shall be those questioning ... principles or spirit of the bill and calling for its return to the Government, or proposing a complete alternative text.* It is known that bag laws cannot have any principle and spirit, and this article foresees to return to the government the bills that have no principle or spirit.

Therefore, it can be said that there is no bag law in the Spanish Parliament and when there is no bag law in a parliament, the need for the same text to be discussed at more than one committee is significantly reduced. As the bag laws contain more than one subject, they should be referred to more than one committee and when there is no bag law, there is no need of negotiation in more than one committee.

In the British Parliament, as in Spanish Parliament, there is no any distinction such as the main committee and the secondary committee. Much of the work of Parliament, i.e., of the House of Commons and the House of Lords, takes place in committees which examine issues in detail, from government policy and proposed new laws, to wider topics like the economy. There are four main types of the committee: *Select committees* check and report on areas ranging from the work of government departments to economic affairs. *Joint committees*, which have similar powers to other select committees, are committees consisting of MPs and members of the Lords. There are two types of joint committee: Permanent and temporary. Joint Committees on Human Rights, National Security Strategy and Statutory Instruments are permanent joint committees. Temporary joint committees, are appointed for specific purposes, such as examining draft proposals for Bills on subjects ranging from modern slavery to stem cell research. *General committees*^{xv} consider proposed legislation in detail. A public or private bill committee is appointed for each bill that goes through Parliament and it is named after the Bill it considers (UK Parliament, 2018). General committees are temporary committees established for debating bills. For each bill a new general committee is formed, and this committee, which is called by the name of the proposed bill, is dissolved after the report has been submitted. For example Standing Committee A^{xii} considered the New Town Bill, the Shipbuilding Bill, the Transport Bill and the Oil and Pipelines Bill. Each of these committees is committee A, but their members are totally different; their common point is the letter A. There is no limit to the number of general committees established in a particular period, but most sessions have seven or eight at maximum. (Silk, 1989, s. 129-130). *Grand committees* debate issues affecting MPs region; every MP representing a constituency in the region is entitled to attend Grand Committee meetings. (UK Parliament, 2018)

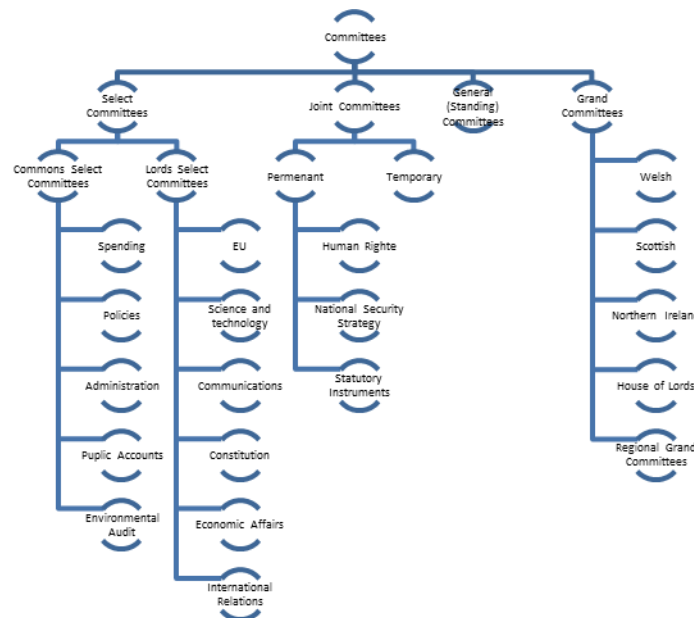


Figure 4. Committees in the British Parliament^{xiii}

In the UK system, it seems that the main committees charged with negotiating the bills are general committees. That's why we will focus on these committees here. In the British committee system the distinction between the main committee and the secondary committee, naturally, is unnecessary. The reason for this is clear: A new general committee has to be established for every new bill, and it is possible to bring expert MPs in this committee during the establishment of this committee. Establishment of a new committee, each time, creates opportunity to bring together the expert MPs under this committee. Hence, it is never necessary to have more than one committee debate on the same bill in this system.

As a matter of fact, the committees that organized in the first RP of GNAT, which entered into force in 1927, have similarities to these general committees of British Parliament. According to article 25 of 1927 RP of GNAT, the General Assembly had the authority to establish mixed or temporary committees in addition to the existing 17 permanent committees. In this RP, there was no need to make division between the main committee

and the secondary committee, because a temporary committee or mixed committee could be established for the bills that changed more than one law.

From these two examples, namely the British general committees and the commission system envisaged in the 1927 RP of the TGNA, the following conclusions can be drawn: (1) If it is possible to establish a temporary or mixed committee for a bill, then the main committee-secondary committee distinction becomes unnecessary. (2) Temporary or mixed legislative committee has the advantage of bringing together expert MPs. (3) The temporary or mixed committee mechanism solves the problem of referring the bill to more than one committee regardless bag law problem.

Under this subheading, we have examined the repetition problem between committees and the two countries that do not have such a problem. Moreover, it has been shown that there was no such problem in the RP that applied in the first years of the GNAT. Based on the results obtained from these examinations, the following summary can be made. Today's main committee-secondary committee distinction in the RP of GNAT was introduced as a response to the past problems, but it has further deepened the problem. Certainly, it can be said that this distinction does not work and it causes more harm than good. This rule, on the one hand, only leads to bureaucratic procedures and time loss since the secondary committees generally do not fulfill their duties. On the other hand, when the secondary committees fulfill their duties, their opinions are not taken into consideration by the main committees and the work done in the secondary committee is being repeated by the main committee. This means loss of time, energy and cost. The solution is to remove this division or make it rational: (1) The bag bills are the main source of the problem, because they contain articles that foresee amendments in different laws and therefore they require the examination of more than one committee. As a solution, bag laws must be strictly and completely forbidden. (2) Instead of main committee-secondary committee distinction, temporary or joint committee should be preferred. British general committees or temporary or mixed committees in 1927 RP of GNAT prove that there is no problem when there is no such distinction. Therefore, the removal of this distinction and the replacement of it by temporary legislative committees may be proposed as a solution.^{xiv} (3) Instead of the temporary commission, as in Spain, it is possible to settle the problem with various rationalization techniques. Replacement of the committee members among committees, the right to submit amendment for all the MP are some examples of these rationalization techniques

Domination Problem

The second problem in the committees is the domination problem and this problem arises in two phases: (1) establishment of the committee, (2) management of the committee. There is a fundamental principle in the committees that must be applied both during the establishment phase and during the management phase. This fundamental principle, which at the same time determines the framework of the working method of the legislature, is regulated in article 95 of the 1982 Constitution:

The GNAT shall carry out its activities in accordance with the provisions of the Rules of Procedure drawn up by itself. The provisions of the Rules of Procedure shall be drawn up in such a way as to ensure the participation of each political party group in all the activities of the Assembly in proportion to its number of members. Political party groups shall be constituted only if they have at least twenty members.

Although this article seems clear, it has been the subject of different interpretations both in practice of the GNAT and in Constitutional Court's judicial decisions. The problem is rooted in the expression of "to ensure the participation of each political party group". What does it mean "ensure the participation of each political party group". Does this mean that only political party groups should be involved, or does it include the participation of parties who cannot form a group and independent MPs? Does this statement require that the premise be implemented on a parliamentary basis or on a commission basis? The reason that have led to the emergence of dominance in the establishment and management phases of the committees can be found in the answers of these questions. Now we will focus on the answers to these question and how they lead to the dominance problem in establishment phase and management phase.

Domination problem in the establishment of committee

The last sentence of Article 95, quoted above, was: *Political party groups shall be constituted only if they have at least twenty members.* According to this rule, it is very clear that political parties which have fewer than 20 members cannot form a political party group. For example, when a political party has 19 members, it cannot form a political party group on its own or with another party. Let's think about a scenario: Let's say total number of MP is 550 and there are 11 political parties in the parliament. Ruling party has 360 member and the other 10

political parties have 190 members. Let's say each political party has 19 member. In this case, all committee memberships will belong to the ruling party and no membership will be granted to other political parties. But, there is also a part which is neglected in the same article: "*The provisions of the Rules of Procedure shall be drawn up in such a way as to ensure the participation of each political party group in all the activities of the Assembly in proportion to its number of members.*(emphasis added)" Hence, a careful examination of the article reveals that the regulation consist of two parts: (1) Political party groups should participate, and (2) Political party groups should participate in proportion to their number of members. In the mentioned scenario the ruling party's proportion is $360/550= 65$ percent. However, if all committee memberships belong to the ruling party, this party will have a power above the proportion to its number of members. It is clear that such an application will be against the Constitution. In order to avoid a practice contrary to the Constitution, all the political parties, regardless of whether they are a political party group, should also be allowed to participate in legislative activities.

What is the real situation in practice? To answer this question it is necessary to look at the RP. According to article 21 of RP, "*The Speaker determines the number of committee members allocated to each political party group in accordance with the percentages specified in the first provision of the Article 11*" and according to referred article 11, "*The Speaker of the GNAT determines the percentages of political party groups over the total number of party groups and the number of positions in the Bureau per each political party group and submits the results to the Board of Spokespersons.* (emphasis added)" This means that all memberships in the committees and in the Bureau^{xv} are allocated to political party groups and no share is given to the political parties, which do not have a group, and the independents. Therefore it is claimed that this implementation is contrary to the Constitution. Advocates of this claim states that all the MPs, regardless of whether they are a member of the political party group, should participate to the legislative activities and that otherwise the political party groups will be over-represented (Teziç, 1980, s. 100-101). In the doctrine, this view is widely accepted. Moreover, this view is a view that the Constitutional Court supports with its decisions. The problem was brought twice before the Constitutional Court in 1970 and 1973 and in both cases the Court decided that the application was contrary to the Constitution (E. 1967/40, K. 1970/26, 14.05.1970; E. 1973/43, K. 1973/39, 25. 12.1973). But despite this widely accepted view of the Doctrine and the decisions of the Constitutional Court, the regulation in the RP and the practice that based on this regulation, have been otherwise. That means, in practice, MPs, who are not members of the political party group cannot be members of the committees or members of the Bureau. (Bakırcı, 2000, s. 336-337)

In order to be persuaded, it is necessary to look a little more closely to the issue of compliance with the Constitution. In the doctrine and in the decisions of Constitutional Court, it is alleged that if all of the memberships in the committees are given to political party groups, these groups will gain a power over their real proportion to their number of members. In order to avoid such a situation, each political party should be represented in proportion to its power, regardless of whether or not it can form a group. This result is a principal derived from Article 95 of the Constitution and it may be called as *the representation principle proportional to its own power*. This principle does not allow political parties to be represented neither over their power, nor under their power (Tanilli, 1982, s. 301-305). Therefore it can be said that the regulation and implementation of the RP, which do not allow political parties other than political party groups to be represented in the committees, are contrary to the Constitution. Hence, the Constitution allowed the independent MPs to become the members of Budget Committee and investigation committee, which directly are regulated by the Constitution itself. Moreover, there is an obligation to include independent MPs who are not members of political party groups, at the Committees, which are regulated by law, namely the Human Rights Committee, the Committee on State Economic Enterprises and the Committee for Equal Opportunities for Women and Men, and the EU Harmonization Committee. In other words, both the Constitution and the laws allowed the independent MPs to become members of the committees, whereas RP did not (Bakırcı, 2011, s. 118-119). This is another proof of the unconstitutionality of the regulation included in the RP in this regard.

The disadvantage of the current practice, which is alleged to be contrary to the Constitution, is that the shares of the small political parties is distributed among big political party groups and that in this distribution the biggest party takes the biggest share. If it is supposed that the biggest party is the ruling party, it can be argued that this situation has increased the dominance of the ruling party.

Countries that have the principle of rationalized parliamentarism do not encounter such a problem. Hence, here, some countries can be examined to find a solution to the problem in GNAT. A good example that has completely solved this problem is the Spanish Parliament. In this parliament, by using the concept of parliamentary group instead of the concept of political party group, the possibility of emergence of the problem has been zeroed.

According to RP of Spanish Parliament:

A parliamentary group may be formed by a minimum of fifteen members. A Parliamentary Group may also be formed by members of one or more political parties... (art. 23). Members who belong to none of the parliamentary groups so established may associate with any of them by means of an application... (art. 24). Members who, according to the provisions of preceding Sections, are not included in a parliamentary group within the term specified, shall form part of the Mixed Group. No Member may belong to more than one parliamentary group. (art. 25)

An important conclusion that can be drawn from these articles is that: Every MP is a member of a parliamentary group and a MP cannot be a member of more than one parliamentary group.



Figure 5. Parliamentary groups in Spanish Parliament^{xvi}

If every MP is a member of a parliamentary group and no one is a member of more than one group, then the representation principle operates automatically and there is no possibility to act against this principle. This means that, in the Spanish Parliament, the participation to the legislative activities, and therefore to the activities of committee, is guaranteed for all political parties and independent members. Neither the ruling party, nor any other party can be represented over or under its power in the committee.

Another example can be found in Austrian Parliament. It is enough to have only five MP to establish a political party group in the Austrian Parliament. On the other hand, there is an electoral threshold in this Parliament, and every political parties that exceed the electoral threshold can certainly have more than five members. This means that in the Austrian Parliament all political parties that exceed the electoral threshold can establish a political party group and so every MP is automatically a member of a political party group (Bakırcı, Avusturya Parlamentosu Üzerine, 2013, s. 1197). So, here too, there can be no over-representation of any political party in general assembly or in committee as it is in the Spanish Parliament.

Lastly, it is necessary to deal with why *the representation principle* is so important. In representative systems, every deputy is elected to represent the views of certain voters. It is therefore natural that every MP should be given the right to participate in legislative activities. However, it is often not possible for each deputy to participate individually in legislative activities because of time constraints. The general assemblies of parliaments are crowded boards and due to time insufficiency it is almost impossible for every member of this board to be given the right to speak every day. For example, there are 550 MPs in the GNAT and the time required for each deputy to exercise one minute of speech per day is at least 550 minutes (about 9-10 hours). If it is taken into consideration that the daily working time is much shorter than this and if it is thought that it is difficult to express any opinion in a minute, it is understood that the legislative activities cannot be accomplished with this method. Parliament's solution to this problem is to separate MPs into groups and give them rights in groups. These groups may be political party groups (as in Austria) or parliamentary groups (as in Spain). In both cases, MPs can participate in legislative activities using the rights granted to the groups they belong to. In a democratic and just parliament the total working time should be allocated among these groups in proportion to their number of members. In Spain all MPs are members of parliamentary group and in Austria all MPs are members of political party group, and therefore it can be said that the requirements of the principles of democracy and justice, in this respect, have been fulfilled in these parliaments. It is difficult to say that the requirements of these principles have been fulfilled during establishment of committees in the GNAT, because non-member of political party groups and independent MPs do not have a right to be a member of a committee in general. However, these members have limited rights to participate in certain activities of the General Assembly, as a requirements of the article 95 of the Constitution. Therefore, it is possible to say that the 95th article is applied partly, and in the committees and the General Assembly differently. On the other hand, it cannot be said that the implementation in the General Assembly fully guarantees the rights of these members. For example, according to article 72 of the RP^{xvii}, these MPs have right to speak in their own name. However, this right is not peculiar to these members. Every member, regardless of whether he is a member of a political party group, may use it: In the end of the debates, two MPs have right to speak on behalf of themselves.

According to article 61 of the RP, *the floor is given in sequence of enrollment or requests*. So when more than two members wish to speak, the right of speech belongs to the first two members who makes a request; if there is more than two requests at the same time, it is necessary to draw lots among them. This means that, here, the rights of MPs who are not a member of a political party group or who are independent MPS are not guaranteed because this right may also be used by the members of a political party groups on behalf of themselves. Therefore, it is possible to summarize the results of the application of Article 95 as follows: (1) It is not implemented in the committees in respect of non-group MPs, (2) its implementation in the committees is different from its implementation in the General Assembly, (3) non-group MPs can speak on the General Assembly, provided that they make a request before others, (4) if the right to speak is used by member of political party groups, non-group MPs cannot speak.

As a result, *the representation principle is the precondition for the principles of democracy and justice and a tool to prevent the domination of big political parties*. In order to ensure the full implementation of the representation principle, the right to participate in legislative activities in proportion to their power should be given not only to MPs who are members of a political party group, but also to MPs who are not members of a political party group. . For this reason, the regulation in the RP should be amended by taking into consideration examples such as Spain and Austria.

Domination problem in the management of committee

According to RP (art. 24) *each committee elects its chairperson, vice-chairperson, spokesperson, and secretary^{xviii}. Quorum for... election is the absolute majority of total number of the committee members... The vote of the absolute majority of the members present is required to be elected.*



Figure 6. Bureau of the committee

As it is explained above, all memberships in the committees are allocated to political party groups. As a natural consequence of this, the ruling party precisely gets the majority in all committees. To be elected as chairperson, vice-chairperson, spokesperson, and secretary of the committee the vote of the absolute majority of the members present is required. Therefore it can be easily supposed that the ruling party has the power to elect bureau of committee in all committees. In practice all the members of this bureau are elected from the ruling party; winner takes all. This means that the committee management is in full control of the ruling party group.

The following quotation from a report that criticizes this practice, proposes some solutions by giving some examples:

Committee chairmanships should be allocated proportionately to the size of the parliamentary groups. This would constitute a clear departure from the current Turkish practice of 'winner takes all' when it comes to committee chairmanships and also the chairmanships of inter-parliamentary groups. ...It is also worth considering whether to adopt the practice found in many EU countries, such as Germany, The Netherlands, Portugal, Spain or, more recently, France, to reserve the chairmanship of the Plan and Budget Committee to a representative of the largest opposition party. In the UK, the Rules of Procedure of the House of Commons require that the chairman of the Public Accounts Committee be an opposition Member. The desired effect is to encourage 'responsible' opposition. (Irwin, Goetz, Karpen, Hénin, & Nabais, 2010, s. 32)

It is possible to argue that Article 95 of the Constitution is once again violated here because as a requirement of the representation principle, management of the committee should belong to all groups of political parties, which are being represented in the committee. If the administration of the committee is dominated by the ruling party group, it means that political party groups do not participate in legislative work in proportion to their powers.

Considering the suggestions made in the above quotation, different solutions can be found for the problem:

Solution 1: Proportional allocation of committee chairmanships

In order for the administration of the committees to be made in proportion to the powers of the political party groups, the total committees' chairmanships should be distributed among the political party groups in proportion to their powers. For example if there is 20 standing committees and the proportions of existing four political party groups are, consecutively, 60, 20, 10, 10, then the number of chairmanship for these parties will be 12, 4, 2, 2. In other words, in this case, 12 of 20 chairmanships will be given to the ruling political party and 8 chairmanship will be allocated among the opposition parties.

Solution 2: Reserving some committee chairmanships for opposition party groups

In this solution, instead of randomly distributing committee chairmanships to political party groups, it can be considered that the chairmanships of the oversight committees is given to the opposition parties and the other committee chairmanships to the ruling party group.

Solution 3: Sharing the memberships of the bureau of the committee

In this solution, the bureau memberships can be distributed to political party groups at every committee. In this case it is likely that the committee chairmanships will be given to the ruling party and other tasks will be shared among the opposition parties. This is the least desirable solution, because the most influential figure in committees is the chairman of the committee. Undoubtedly these solution are proposals and these proposals can be further developed.

If the majority, and therefore administrative body of a committee belongs to a single political party group, the committee may become under the domination of the ruling party. In this context, Wheare's question that '*is it (the committee) doing the job?*' should be asked one more time. Because under the domination of a ruling party committee may become a mere screen and it can be said that the committee is not doing its job.

Civic Participation Problems

Committees can play a decisive role not only in permitting parliamentary consideration of executive proposals but also in mobilizing the consent of interest groups (Marsh, 1986, s. 28). NGO participation or civic participation, on the one hand, provides knowledge and information that is required for developing the draft bills and, on the other hand, it supports the legitimation of the political system. Therefore most of democratic countries have developed some methods to obtain knowledge, information and experiences of specialists, private persons and organized structures as witnesses or specialists. For example in the USA each political party group has right to invite witnesses in the hearings and witnesses have to submit their written opinion before the hearing. Witnesses are questioned by the political party representatives after their short presentations. Witnesses have to comply with some rules that aim to have a more disciplined and therefore effective debate (Bakırçı, Yasama Erki ve Yasa Yapma Sanatı, 2012, s. 318-325). However, it should be noted that there may be a different hearing practice in each country. For example in Sweden, the chairman of the committee prepares the questions that will be addressed to the witnesses. (Karamustafaoglu, 1965, s. 172-174)

As it is mentioned in the introduction, RP does not contain any rules concerning civic participation. Article 30 of the RP was interpreted in such a way as to allow NGO representatives to be invited to the committee meetings by the committee chairpersons. According to this article:

The Prime Minister or a minister may attend committee meetings. The Prime Minister or the minister may authorize a high rank public official in writing to represent him/her, if he/she deems it necessary. /Committees may invite experts in order to consult their views.

The experts mentioned in this article are, of course, not *experts* in NGO's. These are *experts* or bureaucrats who may come to the committee meeting with government representatives. However, with the widespread involvement of NGOs in all parliaments in the democratic world, the concept of *experts* has begun to be understood to include experts from NGOs. But, inviting NGO representatives to committee meeting by using the concept of *experts* is a matter of interpretation and this interpretation may vary from one committee chairman to another. The invitation of an NGO representative based on such an interpretation has no possibility of providing a systematic NGO participation. Therefore, NGO participation based on such an interpretation has led to various problems in the practice of committees in GNAT: (1) The different interpretations of the Committee chairpersons on this issue have led to different practices among committees. If a chairman of a committee is against NGO participation, there is no provision that would force him to invite NGO

representatives. In other words, the non-invitation of NGO representatives to committee meetings does not legally result in the violation of the RP. Therefore NGO participation has been left to the discretion of the chairpersons of the committees and the chairpersons of the committees, naturally, used different discretionary powers because each one's attitude towards the NGO participation may be different. In addition, committee chairs may invite NGOs to the meeting according to their political preferences, which prevents the expected benefit from NGO participation. (2) NGO participation in the same committees may vary by legislative terms because every newly elected chairperson of the committee may have a different view on the participation of NGOs than the former. (3) There is no NGO database in the committees and each committee determines the NGOs to be invited to the meeting in its distinctive method. Some committees have a short list about NGO's that has already joined their meetings. Some others are trying to determine concerned NGOs by internet research. Sometimes the invitation is sent to the NGOs, which are recognized by the committee chairperson, members and officials. Some very strong NGOs have permanent representatives in the Parliament and it is much easier for them to participate in committee meetings. This situation increases the overrepresentation of strong NGOs. Thus, the imbalance about the expression of social interests in parliament increases even more. (4) It is not clear whether the invited NGO representatives will be given the right to speak because there is no provision on NGO participation in RP. Moreover, if the NGO representatives are given the right to speak, the duration of this talk is uncertain. In practice, NGO representatives are given no say or they are given a limited time due to time constraints in the committees. This often leads to the rightful reaction and dissatisfaction of NGO representatives. (5) It is not clear that expressed opinions by NGO representatives on the committee meeting will reflect on the commission report. This breaks NGOs' enthusiasm for participation in committee meetings. These criticisms on NGO participation can be further increased. However, the criticisms made up to this point are sufficient to reveal the need for regulation in the RP that allows a systematic NGO participation, such as *hearing* (Bakırcı, 2012, s. 318-325). It is difficult to argue that there is a democratic legislative process in committees without such systematic NGO participation. Because mechanisms such as hearing do not only create an opportunity for witnesses to compete against each other but also provide the publicity of the considerations. (Bradshaw & Pring, 1981, s. 247)

General problematic aspects: mechanisms to accelerate legislative process

As it is quoted from Wheare above, in judging the work and structure of the committees, we always have to take into account the institutional system to which they belong (Wheare, 1955, s. 2-3). Because problems in the General Assembly and in the whole legislative body certainly are reflected in the committees. It is inevitable that a tendency and attitude emerging in the General Assembly over time also influences the committees. Therefore, in this study, which examines the problems in the committees, the problems that arise in the General Assembly will be reviewed in brief.

One of the most prominent features of the GNAT in recent years is the need to work more and more due to the growing need for legislation.^{xix} According to Table 1, the average annual working time in the 10 year period between 1984 and 1994 was around 500 hours, which increased to 750 hours in 2004-2014. This means that the working hours increased more than 50% from 1984 to 2004. Considering certain years, it can be seen that the working hours doubled: for example in 1987 the working hours were 430 hours and in 2009 it increased to 854 hours.

It may be instructive to make a comparison to show this upward trend in working hours in GNAT. However, when comparing, it is necessary to be cautious about the statistics because of the system differences between the two parliaments. For this reason, it is necessary to draw attention to some points when we make comparison between GNAT and UK Parliament in Table 1. (1) We couldn't find working hours for House of Commons before the year 2004 from reliable sources, except the year 1983. The figures after 2004 were taken from the official web site of the UK Parliament. (2) The figures for the UK Parliament may include some activities that are not included in the figures for the GNAT, such as *the time taken in the dinner/lunch*. The figures for the TGNA indicate the time spent completely in the General Assembly. This may be a reason why the working time in the UK Parliament seems to be a little higher than GNAT. (3) During the election years, the total number of working hours can fall due to the election. Therefore, from comparing these years any result cannot be derived.

When these two countries are compared, it can be said that the British parliament worked more than the Turkish parliament in 1983 and after 2004. However, in the UK Parliament, it is possible that the figures may appear bloated due to the fact that some hours not spent in the General Assembly are considered to be spent there. Thus, it can be said that starting from the 2000's, the working hours of both Parliaments are very close to each other. For example, the annual average of 10 years between 2004 and 2014 is 840 hours for the GNAT, while it

is 914 hours for the UK Parliament. However, when the increase in working hours over time is examined, it can be concluded that the increase in the British Parliament has lagged behind the increase in the Turkish Parliament. The annual average of the last four years between 2013 and 2017 is 1001 hours for the GNAT, while it is 945 hours for the UK Parliament. Finally, it is necessary to add here that the working time in the GNAT has been doubled with the 2017 RP Amendments. Therefore, it can be said that the figures that will take place in the tables for the next years will vary drastically.

Table 1. Working hours in GNAT and the UK Parliament^{xx}

Terms/Parliaments	GNAT	COMMONS	Terms/Parliaments	GNAT	COMMONS
1983-1984	222	600 ^{xxi}	2004-2005	701	459
1984-1985	540		2005-2006	747	1372
1985-1986	586		2006-2007	701	926
1986-1987	590		2007-2008	810	1110
1987-1988	430		2008-2009	589	907
1988-1989	453		2009-2010	854	445
1989-1990	460		2010-2011	573	
1990-1991	491		2011-2012	1297	2006 ^{xxii}
1991-1992	574		2012-2013	1327	903
1992-1993	683		2013-2014	1073	1011
1993-1994	719		2014-2015	830	823
1994-1995	1024		2015-2016	1137	1012
1995-1996 ^{xxiii}	0		2016-2017	964	934
1996-1997	707				
1997-1998	781		Total	24018	11908
1998-1999	64		Average per year	882	916
1999-2000	700				
2000-2001	722		2004-2014	8399	9139
2001-2002	610		Average of 2004-2014	840	914
2002-2003	603		2013-2017	4004	3780
2003-2004	629		Average of 2013-2017	1001	945

The GNAT did not only increase its working time to enact more laws, but also tried to find ways to speed up legislative process to produce more laws during the same working hours and after 2000's, it developed various acceleration methods. Three of these methods, supporting each other, have become able to determine the entire legislative process. These methods are (1) *bag bills*, (2) *basic laws* and, (3) *the bills in the appearance of the proposals*. Now these acceleration methods will be briefly reviewed.

Bag Bills

Turkey, after the 1990's, and in the early of 2000's was on the verge of a transformation. One of the important developments in this period was the EU membership and the GNAT, as a candidate country parliament, had to take some steps in a specific timetable. Some laws, including the Constitution, had to be amended on a timetable. So, GNAT tried to find some ways to speed up the legislative process. One of the solutions was to offer the changes that needed to be made in different laws, by combining them under a package. Such laws may be called as the *packet law*. Such a type of law was the result of a necessity, because to be accepted as a candidate country, Turkey had to complete its homework within a limited time and there was not enough time to put into force the required legislation in the committed timetable. Although these packet laws were initially used for a very good purpose, they caused the emergence of bag laws over time. The decisive difference between the packet law and the bag law is that the package law has a specified common theme in it, while there is no any theme in the bag law. The common theme of the packet laws that issued during that time was the legal regulations required by the *Copenhagen Criteria*, which were preconditions of EU membership.^{xxiv} The aim of these *Criteria* was to raise democratic standards of Turkey to the level of European countries and they, for this purpose, required a large number of amendments relating to laws about fundamental rights and freedoms. In this context law of 4771 (date: 03.08.2002) amended some articles of 11 laws (Law of Association, Law of Foundation, Law Concerning Meeting and Demonstrations, Turkish Criminal Law... etc.) to realize these *Criteria*. Soon after they started to be used for this purpose, they started to be used for another purpose: The

ruling parties were discovered they are able to enact a large number of regulations in a shorter period of time. After this discovery, the packet laws was transformed into bag laws and spread.

The bag law has now become indispensable methods legislative process. When the government wishes to make amendments to a large number of laws, it does so by combining them in a single text, rather than presenting them as separate draft laws. Bag laws provide crucial advantages for the governments by bypassing the legislative process in various ways. A bag bill, *first of all*, bypasses some competences of the Speaker. Because the Speaker has the authority to determine main committee and secondary committees, but she/he cannot use this authority when a bag bill is under consideration. For example, for three ordinary laws, the Speaker has to determine three main committee. However, when these three bills are presented under a single text, the Chairman can determine only one main committee. Thus, the Speaker's authority to refer to other two committees is taken away and the process is bypassed. Within this bypassing process, the Speaker's authority to determine a large number of secondary committee is also bypassed. *Secondly* some committees are bypassed from this process because a bill that would be referred to them in the normal process, may not be referred to them when it is submitted under a bag bill. *Thirdly* bag bill method result in the violation of RP because it is thought that this method is an exceptional way and therefore some additional exceptions may be used. According to the article 87 of the RP *motions of amendment constituting a new bill by making an addition to laws or amending laws other than those within the scope of the bills being debated shall not be processed*. This obviously means that the laws that are not included in the draft bills that are under debate cannot be changed by the committee or General Assembly.^{xxv} Motion of amendments of this kind cannot be submitted to the committee or General Assembly. But in practice, when a bag bill is under debate, all the limits are removed. In this regard, the following logic is accepted: Bag bills are not defined in RP, Constitution or any other legal text. For this reason, no legal limit can be imposed on them. Bag laws are an exceptional method of legislation born with practice and so the legal limits cannot be applied to them. As a consequence of this logic, the number of articles can be increased by a surprising amount in committees and the General Assembly. For example, while there were only 120 articles in a draft bill, which was the basis of Law No. 6111 (dated 13 February 2011), 114 articles have been added to it in the committee and General Assembly and it was doubled. 59 of them added by the committee and others by the General Assembly. Only the title of the bill was three pages. The regulation, which was adopted as a 234-articles law, changed 7 different decrees with 66 different laws. In the ordinary legislative procedure, 66 different draft bill had to be presented, and these bills had to be debated at 66 committees; the General Assembly had to debate 66 different bills. Thanks to the bag law, all these negotiations were reduced to one negotiation.

Above it was said that bag laws should not be considered a category in the classification of laws and therefore RP of Spain Parliament does not contain any regulation about bag laws. In fact, this method does not exist in any of the countries that use democratic legislation process. The *omnibus bill* in the United States, at first glance, resembles the bag law, but they differentiate from each other for an important reason. Omnibus bill is defined as the *legislation that addresses numerous and not necessarily related subjects, issues, and programs, and therefore is usually highly complex and long* (Sinclair, 1997, s. 64). Actually, bag bill also *addresses numerous and not necessarily related subjects, issues, and programs, and therefore is usually highly complex and long*. However, there is a substantial difference between them. Bag bills are prepared when there is no consensus among the government and opposition; by using bag bill mechanism, it becomes possible to legislate in a short time some regulations, which would otherwise take too long to legislate. However, omnibus bill requires the existence of a consensus between the president, party leaders and members as a precondition. Presidents who favor only one part or some parts of omnibus bill are forced to sign a larger bill that includes articles they find distasteful. Party leaders and members do the same. The President and Congress have mutual advantage in enacting an omnibus bill. Although both of them may benefit from their use, they see omnibus legislating as a *necessary evil*, because otherwise the president most probably would vetoes the bill and Congress would not enact the proposal of the president that is included in the bill (Krutz, 2001, s. 210-211). Hence, while omnibus bills reflect a consensus between the Congress and the President, the bag bills are the result of the disagreement between the government and the opposition. As a result, omnibus bills are indispensable tools in the operation of presidential systems.^{xxvi} On the contrary parliamentary systems have to abandon bag law mechanism to have a system based on reconciliation. For this reason, it is a logical mistake to try to legitimize bag laws by claiming that the bag laws resembles the omnibus in the US. Consequently, bag law methods must be immediately banned for democratic legislative processes both at committees and at the General Assembly.^{xxvii}

Basic Bills

Second acceleration method discovered in the same period is the basic law method. The concept of *basic law* in GNAT is based on the concept of *organic law* in various parliaments. In these parliaments, organic law is a medium category between constitution and ordinary laws. It has lower importance than constitution but it is more important than ordinary laws. Generally, laws that are related to fundamental rights and public freedoms, the statutes of autonomy, the general electoral system, public organization and other important issues are under this category.

According to Spanish Constitution organic laws (*ley orgánica*) defined as follows (art. 81):

(1) Organic acts are those relating to the implementation of fundamental rights and public freedoms, those approving the Statutes of Autonomy and the general electoral system and other laws provided for in the Constitution. (2) The approval, amendment or repeal of organic acts shall require the overall majority of the Members of Congress in a final vote on the bill as a whole.

According to French Constitution organic laws (*loi organique*) defined as follows (art. 46):

(1) Acts defined under the Constitution as organic are passed and amended as follows: (2) The Government or Private Member's Bill may only be submitted, on first reading, to the consideration and vote of the Houses after the expiry of the periods set down in the third paragraph of article 42... (3) ...in the absence of agreement between the two Assemblies, a bill may be adopted by the National Assembly on final reading only by an absolute majority of its members. (4) Organic laws relating to the Senate must be passed in the same wording by the two Assemblies. (5) Organic laws may be promulgated only after the Constitutional Council has declared them constitutional.

According to Constitution of Hungary organic laws (*Cardinal acts*) defined as follows (art. T):

(4) Cardinal Acts shall be Acts, for the adoption or amendment of which the votes of two-thirds of the Members of the National Assembly present shall be required.

Finally according to Constitution of Hungary organic laws defined as follows (arts. 164 and 165):

Laws originate in the National Assembly and are divided as follows: a. Organic laws, which are those issued in fulfillment of Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Article 159;... The organic laws require for their enactment a favorable vote of the absolute majority of the members of the National Assembly in the second and third reading.

When these examples are examined, the common features of organic laws can be shown in this figure:

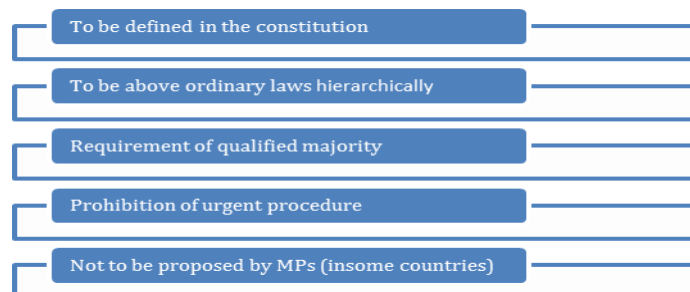


Figure 7. Common features of organic laws

The concept of basic the law in the GNAT, despite receiving inspiration from the concept of organic law, carries none of the features set forth herein. On the contrary, the concept of organic law and the concept of basic law in the GNAT have completely opposite features: Basic law is not defined in the Constitution; it is not above ordinary laws hierarchically; it does not require qualified majority; it can be proposed by any MP and most

importantly can be subject to urgent procedure. In fact, urgent procedure is the most decisive feature of basic law in the GNAT; basic law can be defined as the law that is subject to urgent procedure. Therefore, Neziroğlu defines basic law as with its purpose: Its purpose is to speed up the negotiation process of comprehensive bills at the General Assembly (2008, s. 411). This definition is undoubtedly compatible with practice, but it has no any common point with the organic law described above.

As mentioned above Turkey, after the 1990's, and in the early of 2000's was on the verge of a rapid transformation. Comprehensive basic laws such as criminal law, trade law and civil law, which were issued in 1920s, had to be changed. However, the GNAT did not have sufficient time to enact these comprehensive laws through its current working method, because there was no any rule for urgent procedure in 1973 RP. The solution was found during the 1996 amendments in the RP, and the RP was supplemented by an article (art. 91) bearing the title of the *Basic Laws*. This first regulation was really prepared with a democratic understanding and it was very reasonable: The Advisory Board of GNAT would, by *unanimous consensus*, set specific methods of negotiations. However, this unanimity could not be ensured and the article 91 of was amended by ruling party in 2001. But the amended article still was containing a democratic essence, because upon failing to compromise in the Advisory Board, the General Assembly would have to reach a *two-thirds majority* to adopt basic law method. These *unanimous consensus* and *two-thirds majority* were closing the gap between basic law and organic laws, because these majorities had the power to change the Constitution. Unfortunately, the Constitutional Court annulled this arrangement and led to the adoption of an article with less democratic nature. The article, before reaching its today's shape, amended five times by the TGNA and annulled three times by the Constitutional Court.

In the current article 91, the basic law is defined as follows:

a) Bills amending and putting into force laws, including general principles, that systematically amend a particular branch of law, completely or comprehensively; relating to a considerable part of personal and social life; indicating the basic concepts of special laws to which the bill relates, ensuring that the special laws are implemented in harmony, necessitating the protection of integrity and relations between the articles in terms of areas it regulates; having been subjected to special debating and voting procedure in previous legislative process; and those bills amending the Rules of Procedure, completely or comprehensively

This definition at the beginning of the article resembles the definitions of the organic laws examined above. However, this is illusory. To see this illusion, we need to read the rest of the article:

(they) may be decided to be debated in the Plenary as chapters, and which articles will be included in chapters having no more than thirty articles upon the recommendation of the Government, the primary committee or the party groups, and the unanimous proposal of the Board of Spokespersons... b) If no unanimous decision is taken by the Board of Spokespersons, the Plenary may decide on the implementation of the legislative method stated in paragraph (a) upon the proposal of political party groups.

The conclusion is that: The absolute majority of members present at the General Assembly have the power to determine whether any matter, irrespectively with its content, should be negotiated as a basic law. In other words, the determination of the basic law is neither an act of the Constitution, nor it is left to the decision of the qualified majority; each matter can be negotiated as a basic law by simple majority of the General Assembly. (Tanör & Yüzbaşıoğlu, 2013, s. 295)

The main reason why a bill is intended to be discussed as a basic law is that this method saves a considerable amount of time. Majorities in the General Assembly tend to use this mechanism for every bill and turn it into a general method of the legislative process because it provides a very advantageous situation. (Bakırcı, 2008, s. 413-429).^{xxviii} According to article 91, *(they) may be decided to be debated in the Plenary as chapters, and which articles will be included in chapters having no more than thirty articles...In such a case, the chapters shall be debated separately, in line with the procedure on debating the articles without reading the articles and the articles in the chapter shall be voted separately...Deputies have the right to table two motions on the article...In this case, the bill is negotiated not article-by-article but as section-by-section that cannot be exceed 30 articles; the limit for motions of amendment to any ordinary bill is 7 but for basic laws, it is reduced to 2.*

The basic law mechanism was originally used for comprehensive laws but due to the advantages it provides, it is now being used for the bill containing a small number of articles. For example Law no 5983 (concerned cooperatives) and Law No. 6005 (concerned universities), although had, respectively, only 11 and 8 articles, were accepted as basic laws (see Table 2). Basic law is becoming a general legislation method: in the 21th

legislative period just 7 basic laws (included 1567 articles) enacted in GNAT, whereas in the 22th and 23th legislative periods, these numbers were, respectively, 29 (included 1589 articles) and 45 (included 4823 articles).

Table 2. Some examples concerning the numbers and section of basic laws^{xxix}

Date	Number of articles	Number of sections	Number of articles in each section
20.11.2007	32	2	17, 15
20.11.2007	65	3	20, 28, 17
25.12.2007	654	22	1-21=30's, 22= 24
16.07.2008	34	2	17,17
24.06.2008	83	3	30, 30, 23
08.07.2008	1535	52	1-50=30's, 51, 52=20
26.05.2009	24	2	12, 14
26.05.2009	31	2	15, 16
26.05.2009	61	3	30, 28, 3
26.05.2009	649	22	1-21=30's, 22= 19
26.05.2009	96	4	27, 25, 18, 26
27.05.2010	14	2	7, 7
13.07.2010	14	2	7, 7
08.06.2010	20	2	10, 10
30.06.2010	15	2	9, 6
13.07.2010	24	2	12, 12

Government Bills in the Appearance of Proposal

The third method mechanism concerns the form of legislative text. According to the Constitution (art. 88) *the Council of Ministers and deputies are empowered to introduce bills*. The second paragraph of the same article mentions *government bills and private members' bills*. So there are two sources of laws, one of which is the government bill, the second is the private member's bill or the proposal of deputy or proposal. Briefly, the government presents the bill while the MP presents the proposal. It is very easy to prepare a proposal in a very short time by an MP. But the same thing cannot be said for the government bill. Regulation on Principles of Preparation of Legislation, which was issued by Prime Ministry, has established some rules that are compulsory to comply with. These rules can be summarized under three headings as in the following figure:

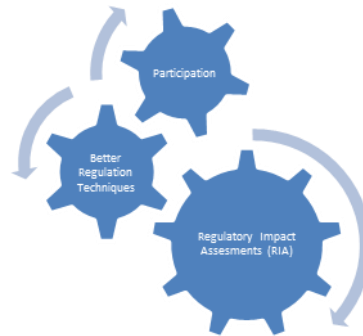


Figure 8. The compulsory activities in legislation preparation

The preparation of a government bill may take a lot of time because some steps need to be taken such as ensuring NGO participation, assessing regulatory impact, using better regulation techniques, persuading all relevant bureaucrats in relevant ministries, signing of the draft by all ministers, etc. Performing regulatory impact analysis requires different amounts of time depending on the content and extent of the regulation. In order for NGOs to be able to submit their opinion, the draft should be sent to them and a period of time must be granted to them for submission of their opinion. Moreover, after NGO views have arrived, it takes a while to reflect these views into the draft. A bill usually concerns more than one ministry, so every ministry's opinion needs to be asked. For this purpose, relevant ministerial representatives may need to come together and negotiate, and these negotiations may need to be repeated. These negotiations may require different amounts of time depending on the content and extent of the regulation. Finally, for the use of better regulation techniques, specialists may need certain amount of time. As a result, all these activities require a certain amount of time during the preparation phase.

Above, it was stated that in the course of EU accession negotiations, the Assembly had to comply with a time schedule and had to complete certain regulations over a period of time. The GNAT had also taken the decision of election and the government had not enough time to prepare the bills containing the required changes. It should be remembered that one of the tools discovered at the time was the packet law mechanism. The second of the tools was the *bill in the appearance of proposal (teklif görünümli tasarı) mechanism*.^{xxx} In fact, these two mechanisms were used together at that time: The amendments envisaged in numerous laws relating to fundamental rights and freedoms were collected in a single text (in a packet law) and the text prepared in this way was submitted in the form of a proposal instead of a bill. The prepared text was not a private members proposal in respect of its essence and was completely a government bill, but it was submitted as a private member proposal to shorten the legislative process. In other words, the bill was submitted in the form of a proposal to bypass the preparation phase of the bill. When this method is used, the preparation process for the government phase is completely skipped and the prepared text is signed by a deputy and submitted to the Speaker as a private member bill. This was the period when a critical decision on whether or not EU accession talks would start would be given.

These three mechanism were discovered in the same time period. The negotiation for a critical decision on whether or not EU accession talks would begin and ruling parties in GNAT announced their will for a new election. So three things were done at the same time: (1) The amendments to the law on fundamental rights and freedoms were gathered under a single law, so the way of the bag law was opened. (2) The proposal of the election was also added to this text. (3) These changes were submitted in the format of a proposal instead of the format of a bill. Shortly thereafter, the basic law mechanism was discovered, and it began to operate with the first two mechanisms. Thus these tools, which were initially used for EU membership, have started to be used for ordinary legislation over time because the legislative process accelerated geometrically with their use.

All these tools show that the legislative process in GNAT has evolved in a certain direction. Here, it is possible to make an assessment of this evolution. In 2017, however, a very important change was made in the 1982 Constitution, and immediately thereafter, a comprehensive amendment was made in 1973 RP. With the amendment made in the Constitution, the parliamentary system was abandoned and the Turkish Type Presidency System was adopted. Therefore, an evaluation to be made without considering these amendments to the Constitution and the RP will be incomplete.

2017 amendments

By 18 articles 18 of Law No. 6771 some amendments were made to 1982 Constitution on April 16, 2017.^{xxxii} Almost 80 articles of the Constitution were amended by these 18 articles and the parliamentary system was abandoned. The new system that was introduced by the amendments is called the *Turkish Type Presidency System* or the *Republican Presidency System* since it is not a complete Presidency System. According to new provisional article 21 of the Constitution *no later than six months after the promulgation of this Act, GNAT shall adopt the RP ...required by the amendments made by this Act*. As a requirement of this provision, the RP had to be amended and on July 27, 2017, the RP of the GNAT was amended with the decision numbered 1160. Interestingly, however, these changes in the RP were not the amendments required by the new provisional article 21 of Constitutional amendments. Therefore, it is expected that the amendments required by the provisional Article 21 of the Constitution will be adopted soon. However, the meaning of the amendments in the RP that are adopted on July 27, 2017 may be meaningful in the above-mentioned evolution of the legislative process and they are therefore worthy of examination. Therefore, the amendments to Constitution and the amendments to the RP will be briefly reviewed in the following subtitles. However, this revision will be extremely limited depending on the purpose of the study.

2017 Constitutional Amendments

Here, because of the purpose and scope of the study, it is not possible to examine the whole of the 2017 amendments; I will focus on three important amendments.

The organic relationship between executive and legislative

One of the most important provisions of the 2017 Constitutional amendments is that the executive power is vested only to the President of Republic (art. 104/1). The previous version of the article 8 of the Constitution was as follows:

Executive power and function

Article 8- *Executive power and function shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and laws.*

The new version of the article 8 is as follows:

Executive power and function

Article 8- *Executive power and function shall be exercised and carried out by the President of the Republic in conformity with the Constitution and laws.*

Due to this amendment, there will no longer be a *Council of Ministers* in the Turkish constitutional system and there will be no such notions as: “*Formation of the Council of Ministers*,” “*vote of confidence*,” “*motion of censure*,” “*collective responsibility of the Council of Ministers*,” “*authorization of Council of Ministers by GNAT to issue decrees having the force of law*,” and so on. This implies an organic separation between the legislative and executive bodies. Given this organic separation, it can be said that the new system has become a classic presidential system. There are, however, three important regulations that prevent the system from being named a typical or classical presidential system.

The *first* regulation is as follows:

The GNAT may decide to renew the elections by the three- fifth majority of the total number of its members. In this case general election of GNAT and the presidential election shall be held together. If the President of the Republic decides to renew the elections, the general election of the GNAT and the election of President of the Republic shall be held together (art. 116/1-2).

The most prominent feature of presidential systems is that the executive power cannot be dismissed by the legislative, except in rare cases of impeachment, between elections. On the other hand the survival of the legislature is independent of president (Linz, 1994, s. 6) (Boyunsuz, 2016, s. 4-5) (Teziç, 2013, s. 504) (Özbudun, 2005, s. 106) (Yılmaz, 2018, s. 76). In other words, when the president has the authority to dissolve the assembly, or vice versa, the system cease to be a presidential system, even if the other features require a presidential system^{xxxii} (Bakırcı, 1994, s. 66). As Shugart and Carey state (1992, s. 18), in the *beginning with The Federalist*, *the central defining characteristic of presidentialism has been the separation of legislative from executive powers*. Although separation of powers in the presidential systems does not mean a complete separation between executive and legislative, there is a critical distinction between the origin and survival of the two branches. For example in USA the presidential veto is an executive intrusion in the legislative process; and the requirement of Senate ratification of treaties allows for legislative influence on the executive. But if the executive and legislative branches can decide to renew each other's election, it is difficult to claim about any distinction between survival of legislative and executive. In other words necessary distinction between survival of legislative and executive does not require to abolish the checks and balances between the two branches. The rationale for separating the sources of the origin and the survival of the executive and legislative is to ensure that each branch can impose checks on the other without fear of jeopardizing its own existence (Shugart & Carey, 1992, s. 18-19). As Yılmaz has stated (2018, s. 80), *the powers to dissolve the legislative and renew the elections that would be added to the disproportionate powers the president would obtain over the legislative branch... are observed in only a few Latin American countries without a good democratic record*. Because in such a case, the executive can establish control over the legislature and thus, may cause the balance between powers to deteriorate in favor of execution. It should also be mentioned here that the dissolving authority that granted to the President of the Republic and granted to the Turkish Grand National Assembly in the Turkish-type presidential system has not the same influence: The president can dissolve elections on his own will, but GNAT will have to find three-fifth majority of its total number, which is not easy to be provided.

The relationship between President of Republic and his political party

The *second* regulation concerns the connection of President of the Republic with his party. According to previous regulation *if the elected President of the Republic is a member of a party, his/her relationship with his party shall be severed and his/her membership of the Grand National Assembly of Turkey shall cease* (art. 101/4). The regulation after amendment is that *the elected President's membership of the GNAT shall cease*. This means that the President of the Republic may, legally, have a tie with his political party. Given the disciplined party structure in Turkey, it can be foreseen that the president may be influential on Parliament

through his political party. On the other hand in case of renewal of the elections both elections have to be made together. On the other hand, according to Constitutional amendments, when the elections are renewed, the simultaneous elections of both bodies, namely the legislative and executive, will be a necessity and this will further increase the potential impact of the executive.

In fact, one of the important features of the US presidential system is that it is based on undisciplined party structure. The absence of ideological polarization in the society leads to undisciplined party structure and this undisciplined party structure allows the government to reach consensus, even when the legislative and executive branches are controlled by different parties (Bakırcı, 1994, s. 98) (Özbudun, 2005, s. 108) (Teziç, 2013, s. 511) (Yılmaz, 2018, s. 17). The widespread belief is that in case of the minority presidency, the existence of undisciplined parties facilitates the relationship between legislative and executive, preventing the system from clogging (Eren, 2002, s. 46). Existence of undisciplined, nonideological, pragmatic, heterogeneous parties is the guarantee of reconciliation between political parties. For this reason, it is a fact that sometimes, the political party, where the President is a member, does not support a certain policy of the President but that this policy is supported by members of other political parties (Özbudun, 2005, s. 108). It is also impossible to talk about legislative political party groups, in the sense of parliamentary regimes. Democrats or Republicans do not act as a group in Congress; there is no concept of group decision. Parties cannot take binding and compelling decisions to take common positions on certain issues for their members in the legislature. For any member of a political party, it is possible to adopt a different opinion from the majority of the party or the president of the party, or even act together with the members of the other parties in some issues. This is not the reason for the being exported from party membership or for a disciplinary penalty (Boyunsuz, 2016, s. 24).

This undisciplined party structure has a different function when the president and the majority of Congress are from (1) the same party and (2) different parties. When both belong to the same party, the members of his own party may contribute to opposition to create a balance against the President. Checks and balances are central to the conception of presidential government; the rationale for separating the origin and survival of executive and legislative powers is to ensure the viability of mutual checks. (Shugart & Carey, 1992, s. 19-22) and undisciplined party structure enables the Congress to become a mechanism of checks and balances. When these belong to different political parties, the undisciplined party structure allows some members of the majority party to support some of the President's policies and this enables the presidential system to survive based on democratic principles.

As for Turkey it is stated that simultaneous formation of the executive and legislative branches and disciplined party structure, together, will destroy the rationale of the typical presidential system. Turkey has a political culture and tradition that have adopted a strict disciplined party structure, and due to this strict party discipline, the president, who will be the executive and the party leader at the same time, will have a strict control over legislature (Köker, 2013, s. 10-20). On the other hand, if the President and the majority of the GNAT do not belong to the same political party, some members of the majority party will not be able to support some of the President's policies because of this disciplined party structure. The disciplined party structure prevents the President, who does not have the majority of the Parliament, from finding the majority he is seeking to support his policies. The president's strong connection with his party and the simultaneous election of both bodies strengthens party discipline and the strong party discipline makes the functioning of the presidential system difficult.

Legislative power of the President of the Republic: Legislative Decrees

The *third* regulation that prevent the system from being named a typical presidential system is that President of the Republic has the power to issue presidential decrees.

In fact, *the veto* is one of the *basic legislative powers that presidents may be constitutionally allocated* in the presidential system; *the veto is the most prevalent, flexible, and routine tool by which presidents can affect the lawmaking process* (Shugart & Carey, 1992, s. 133, 138). But the presidential veto does not represent an independent legislative power but it represents executive intrusion in the legislative process. The fact that the President can issue a decree with the power of the law accepted by legislature means that the functional separation of powers has been removed. The common feature of the presidential systems, however, is that they must have functional separation of powers as well as organic separation of powers.

According to the new article 104 of the Constitution, *the President of the Republic may issue presidential decrees on the matter regarding executive power*. These presidential decrees are strictly different than the

decrees having the force of law that were regulated by the article 91 of 1982 Constitution. According to that regulation, the GNAT could empower the Council of Ministers to issue decrees having the force of law. The empowering law would define the purpose, scope, and principles of the decree having the force of law, the operative period of the empowering law, and whether more than one decree will be issued within the same period. For the presidential decrees there is no need of such an empowering law issued by the GNAT. Moreover decrees having the force of law would be submitted to the GNAT on the day of their publication in the Official Gazette, and there is no such a submission requirement for the presidential decrees. Therefore, it can be said that the President of the Republic has the legislative power beside the executive power.

The Constitution has foreseen various restrictions for the presidential decrees:

1. The fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of the Constitution, shall not be regulated by a presidential decree.
2. No presidential decree shall be issued on the matters which are stipulated in the Constitution to be regulated exclusively by law.
3. In case of discrepancy between provisions of the presidential decrees and the laws, the provisions of the laws shall prevail.
4. A presidential decree shall become null and void if the GNAT enacts a law on the same matter.

However, when the President of the Republic is also president of the ruling party the in the legislature, the majority in the legislature would not likely object to any presidential decree, and the legislature would be rendered dysfunctional, controlled in by the executive. There is no doubt that such a result is contrary to the separation of powers. On the other hand there is no any authority to decide on the discrepancy between provisions of the presidential decrees and the laws. Similarly there is no any authority to decide on *a presidential decree shall become null and void if the GNAT enacts a law on the same matter* (Yılmaz, 2018, s. 83). If the GNAT enacts a law on the same matter with the presidential decree, in such a situation, in the cases before the local courts, there is a possibility that each court can make different decision and these different decisions can lead to justice being damaged in practice. Therefore Yılmaz recommend that (2018, s. 83), the use of the presidential decree should be limited to administrative regulations.

Consequently, it can be argued that the 2017 Constitution amendments strengthened the domination of the executive over the legislature, in accordance with 2017 RP amendments, which will be explained under the subsequent sub heading, as well as the as well as with the past implementations, such as bag law, basic law and the bill in the appearance of proposal.

2017 Amendments of RP

As mentioned above, as a requirement of 2017 Constitutional amendments, GNAT had to amend its RP and on July 27, 2017, the RP was amended with the decision numbered 1160. With the decision numbered 1160, 16 articles of RP were amended. These amendments can be classified under three subheadings.

Amendment concerning meeting hours

According to original rule in 1973 RP *unless it coincides with public holidays, the Plenary of the GNAT meets on Tuesdays, Wednesdays, and Thursdays from 3 p.m. to 7 p.m. but upon the proposal of the Board of Spokespersons, the Plenary may change meeting week, day and hours and may decide to meet on other days as well* (art. 54). As it is explained in detail above, after the 1990s, the GNAT was under a heavy workload and therefore had to work long hours. By using this article, especially in the last legislative years, it changed meeting week, day and hours and decided to meet on other days as well. However, it was necessary to spend a considerable amount of time in order to make such decisions about meeting hours and days. One of the amendments to the Rules of Procedure in 2017 resolves this problem in a reasonable way. According to the new rule, General Assembly will *meet on Tuesdays from 3 p.m. to 9 p.m and on Wednesdays, and Thursdays from 2 p.m. to 9 p.m.* Thus the usual weekly working time is almost doubled by increasing it from 12 hours in total to 20 hours.

Amendments concerning prevention the obstruction of opposition

The main tasks of the opposition parties in parliament are to check ruling parties, to warn them not to make mistakes, and to have the government inspected. For this aim they use some mechanisms that can be called as *obstruction mechanism*. Obstruction has been defined as *the disposition of the minority or of individuals to resist the will of the House ...otherwise than by argument or as ...the raising of frivolous objections, constant repetition of the same arguments, and obvious efforts to spin out debate unduly by the introduction of side issues...* (Rutherford, 1914, s. 166). Opposition parties in the GNAT as well, naturally used some obstruction methods. A significant portion of the 2017 RP Amendments aims to remove these obstruction methods. Some of these amendments will be summarized here.

According to article 57 of the RP *twenty deputies might by standing up or tabling a motion during discussions before the voting by show of hands is conducted. The right to ask for a roll call... before the voting by show of hands is conducted* has been limited by 2017 amendments. According to new regulation twenty deputies can only ask for a roll call in these cases: (1) Before moving to debate on the articles of the bill by the voting by show of hands, (2) While the whole of the bill is voted by show of hands, and (3) During the voting by show of hands the motions that are subject to negotiation.

According to article 81... *if voting on the whole or the articles of the bill is not subjected to open vote, it is voted by open ballot in case of a demand of twenty members, otherwise by show of hands*. The aim of the regulation is to give the MPs the opportunity to ensure that voting results of important issues are added to the minutes, but it sometimes was used by opposition parties as an obstruction method and therefore limited seriously by 2017 Amendments. As the result of new regulation, articles of the bill cannot be voted by open ballot in case of a demand of twenty members.

Article 19 regulates the *Advisory of Council*. In practice, this article had been applied together with the article 63, which was about speech about procedure. According to these two articles... *if the Advisory Council cannot convene in the first call or provide a decision, proposal, or opinion unanimously, the Speaker or the political party groups may individually bring their request to the Plenary directly...*(art. 19) and *if a request is made for a debate on the procedure, at most two members are given the floor for a period not exceeding ten minutes in favor of or against the issue* (art 63). These articles were used as a strong obstruction method by the opposition parties. When no agreement is reached in the advisory body, each political party has the opportunity to take its proposal to the plenary session and in this session four members be given the floor for a period not exceeding ten minutes in favor of and against the issue. In other words it takes 40 minutes for a group proposal to be debated. When there are four group proposal, the required time is 160 minutes, close to 3 hours. When it is perceived that the Plenary's daily working time is 4 hours in total, it is understood that how powerful method is this tool of obstruction. 2017 RP amendments seriously limited this method. According to the new regulations, these proposals will not be subject of procedural debates: Each political party group will be given the floor for 5 minutes on its own proposal and the other groups will be given for 3 minutes on the other parties' proposals upon their requests. This means that the negotiations on the proposals have been reduced from 40 minutes to 12 minutes.

A similar amendment was made in article 63: the speech time in the expression that *"at most two members are given the floor for a period not exceeding ten minutes in favour of or against the issue"* has been reduced to 3 minutes. This means that, as it was in the previous amendment, the negotiations on the procedure have been reduced from 40 minutes to 12 minutes.

Other amendments have been made in the RP that restrict the means of obstruction that are used by opposition parties. Due to the purpose and scope of this study, there is no possibility to enter into more details here. However, it should be noted that an important reason why opposition parties use these means of obstruction is that they do not have a chance to control the government adequately. Therefore, the time saved from the prevention of the obstruction should be, at least partially, allocated to the opposition parties. The lack of such an allocation has disproportionately strengthened the dominance of the ruling party.

Amendments concerning the disciplinary provisions

Articles 156-163 of the RP contain disciplinary penalties applicable to MPs. In the original 1973 RP, these penalties can be roughly divided into two groups: (1) Breach of peace and working order in General Assembly, (2) Offending, swearing, or threatening some persons or some bodies, such as GNAT or President of the

Republic. These penalties, first of all, aim to secure the working order of the General Assembly and secondly to prevent someone from insulting some important bodies. A new disciplinary punishment was introduced, for the first time, after the amendments to the RP. For the first time, some definitions of administrative structure is defined as disciplinary crime and penalties for these crimes are foreseen. Here, it is possible to see the traces of the effort to dominate certain opposition groups.

It can be argued that these amendments, as a whole, are aimed at increasing the domination of the ruling party in the General Assembly. It can be claimed that these amendments are in harmony with the tendency to strengthen domination of the ruling party when considering earlier examined mechanisms, i.e., the bag law, the basic law and the bill in the appearance of the proposal. And one last remark: Two parallel articles of RP are as follows:

Unless ...the Plenary decides otherwise upon the proposal of Board of Spokespersons, time allotted for speeches on behalf of political party groups, committees and Government is limited to twenty minutes and ten minutes for deputies.(art. 60)

Unless the Plenary decides otherwise, upon the proposal of Board of Spokespersons time allotted for speeches on the whole of the bills on behalf of political party groups, committees and Government is limited to twenty minutes and ten minutes for deputies.(art. 81)

What does it mean "unless"? Until today, this phrase has not been understood in a way that would allow for a reduction in the duration of speeches that are foreseen in the articles. The ruling party used this phrase, at the General Assembly meeting of April 4, 2018, to shorten the duration of the speeches. Although the proposal of the ruling party in this regard was not processed by the opposition president of the day, it was processed in the next day's meeting that was managed by the Speaker himself. After all, the General Assembly of the GNAT has reached the possibility of restricting the duration of the speeches as it wishes.

Conclusion

After 1990, Turkey was in a deep socio-economic transformation, and GNAT was under an intense workload because of this transformation. Due to the pressure under the intense workload, Parliament began to search for solutions to overcome this workload. For this aim, the Turkish Grand National Assembly, on the one hand extended its working hours and on the other hand to speed up the legislative process, it created some tools such as bag law, basic law, bill in the appearance of the proposal. The use of these tools as workarounds could be considered appropriate for that period. But this was not the permanent solution; for this aim, the RP had to be thoroughly amended as to include a democratic and rational legislative process. However, these solutions, which had to be temporary, became institutionalized in the long run and further deepened the problem. Such tools need to be removed urgently for a permanent solution.

It would have been another permanent solution to have strong, effective committees within the system and bring them to the point where they would share the workload of the General Assembly. The committees are a crucial part of the rational and rapid legislative process in democratic countries. When the committee stage is planned in a rational way and in a democratic manner, it can help to adopt high quality legislation that, at least in a short time, does not need to be amended. *First of all* the committee phase can be designed as a part of the whole legislative process that is complementary to the General Assembly phase, so that committees can share some of the heavy workload of the General Assembly. For this purpose, it is necessary to define a division of labor between committees, as well as between the General Assembly and the committees, which do not repeat each other and are complementary to one another in the RP. ^{xxxiii} *Secondly* the committees should be open to the participation of all MPs and the number of members of all political parties should be considered in the establishment of the committees. On the other hand, in order to benefit from the expertise of committee members, opposition party groups should be included in the management of the committees as well as the ruling party groups. If the committee membership of is open to all MPs and that if the members of opposition parties in the committee are involved in the committee management, these, on the one hand, will lead to more qualified laws and on the other hand to supervise the executive by the legislative in the committee. It was mentioned above that, at least commission presidency should be given to the opposition parties in order to ensure their participation to the commission management. It should be noted here that this is not the only way for the opposition to participate. There can be many examples of assuring the participation of the opposition parties in the committee. For example, there are *opposition days* in the British Parliament: some days in the legislative process have to be allotted as opposition days, and in these days, opposition parties, and especially the largest opposition party, have the opportunity to discuss their own chosen issues. There were 17 sessions for opposition parties from 1985 to 1989^{xxxiv} (Griffith, Ryle, & Wheler-Booth, 1989, s. 341). *Thirdly*, the involvement of NGO

in the committees contributes to the production of more qualified laws by providing the transfer of their experience and expertise to the legislative process, as well as enhancing the democratic legitimacy of the legislature. Consequently these three issues relate to the creation of a more qualified and effective committee structure, and a legislative reform would be possible if the committees were strengthened in these respects. What needed to be done was, on one side, to strengthen the committees in these respects and on the other side, to remove the above-mentioned means to accelerate the legislative process. But the general trend was exactly to the contrary: On the one hand, the dominance of the ruling party in the committees was reinforced, while on the other the mechanisms that bypassed the legislative process were institutionalized.

During the writing of this article, there have been two important developments concerning this study: 2017 Constitutional amendments and 2017 amendments of RP. With constitutional amendments, the parliamentary system was transformed into a Turkish type presidential system. The reason why the "Turkish type" qualification is used here is that it involves significant deviations from the presidential system. The most important of these deviations are: (1) There is a mutual dissolution authority between the legislative and executive bodies, which means that there is no organic separation of forces. (2) The President of the Republic can continue to be the leader of his party, which will further weaken the functional and organic separation of powers in the Parliament, where the disciplinary party structure exists. (3) Due to his authority to issue presidential decrees, the President will have legislative power, which weakens the functional separation of powers.

According to article 16 of 'The Declaration of the Rights of Man and the Citizen', which was declared after French Revolution in 26 August 1789, 'Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.' Indeed today separation of the powers is an indispensable element of the rule of law. According to Montesquieu,

...it has eternally been observed that any man who has power is led to abuse it; he continues until he finds limits. Who would think it! Even virtue has need of limits. / So that one cannot abuse power, power must check power by the arrangement of things.' (The Spirit of the Laws, 2005, s. 155)

The separation of powers may take different forms in different forms of government. In presidential systems, powers are sharply separated from one another, that is, legislative, executive and judicial are functionally and organically different, whereas parliamentary systems have only a functional difference. In the parliamentary systems, executive, generally originates from legislative, therefore it can be said that there is a moderated separation of the powers. As a result of this organic involvement, the governments are responsible to parliament; it is assumed that the government has the confidence of the legislature during its administration (Tanilli, 1982, s. 382-384). This organic integrity between parliament and government is the main reason of some crisis in parliamentary systems. In 1920's Carl Schmitt was defining the crisis of parliamentary democracy as such:

the real business takes place, not in the open sessions of a plenum, but in committees and not even necessarily in parliamentary committees, and that important decisions are taken in secret meetings of faction leaders or even in extraparliamentary committees so that responsibility is transferred and even abolished, and in this way the whole parliamentary system finally becomes only a poor façade concealing the dominance of parties and economic interests. (The Crisis of Parliamentary Democracy, 1925, s. 20)

Indeed in parliamentary systems, when the government is able to pass its bills without any amendment from legislature or when the government is able to amend its bill in the legislative assembly without taking into account dissenting opinion, that may mean legislature lose its power in favor of government and the government is the unique actor of legislation. Then separation of powers transforms into union of powers in respect of the relationship between executive and legislative and the real division becomes as the division between executive-legislative entity and judiciary (Karamustafaoğlu, 1965, s. 75-76). When executive has absolute majority in assembly, it may become dominant actor in the political system. When the government is integrated as a fortress, the system may become a one-party system (Tunaya, 1982, s. 353). If the rules that guarantees the separation of powers are not well established, than the system may go far away from democracy. In other words, 'if there is no opposition, there is no democracy' (Tunaya, 1982, s. 346)^{xxxv}. For this reason Teziç has pointed out that liberality of a regime does not depend on the division between legislative and executive, but it depends on the division between power and opposition. (2013, s. 472)

In the presidential systems there is an organic and functional separation of powers. If, instead of separation of powers, there is an organic or functional union of the powers, the executive may dominate the legislative or there may be a gridlock of the system. In the presidential system introduced by the 2017 Constitutional amendments, due to absence of an organic and functional separation of powers, there is a possibility that the

executive can control the legislature. The 2017 amendments of RP reviewed above are in line with the tendency of the powerful executive.

Mechanisms that emerged after 1990s, i.e. bag law, basic law, bill in appearance of proposal; dominance of ruling party in the committees; strengthened executive against legislative by 2017 Constitutional amendments and restriction of the rights of the opposition by 2017 amendments of RP may be assessed as the decisive steps taken in the same direction. However, it is also possible to make a different evaluation from a different point of view. During the negotiation of 2017 Constitutional amendment in the Constitutional Committee and in the General Assembly, it was often emphasized that what is intended by the amendment is to "build a powerful legislative". In a presidential system, the precondition of a powerful legislative is a rigid separation of powers. For such a rigid separation of powers, some powers given to the President of the Republic should be used at a very limited level and the legislature should be organized in such a way that it can enact the laws alone. For example President of the Republic should issue presidential decrees only on matters regarding executive power and the legislature should have a very strong committee system to legislate.

Policy recommendations

- Legislative reform should be focused on the committee stage.
- Members of the opposition parties must manage especially supervision committees and they must have some responsibilities in performing committee activities.
- All the MPs should have the opportunity to participate to the legislative activities: Committee membership, right to speech, right to propose amendments etc. Therefore each MP should have a right to be a member of parliamentary group or political party group.
- An effective cooperation and collaboration should be set up between the committees and General Assembly, and among committees.
- Legislative process should be arranged as an indivisible, whole entity. Each actor must have a different role in the whole process and these activities must complete each other; repetition should be definitely avoided.
- Bag laws and government bills in the appearance of proposal must be strictly forbidden.
- Basic laws should be regulated as a special category of laws.
- Domination of ruling party should be prevented by the implementations and separation of the powers should be guaranteed by all of the political actors and powers.

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ⁱ Derived from: (Bakırcı, TBMM'de Komisyonların Yapı ve İşleyişi: Sorunlar ve Çözüm Önerileri, 2011, s. 114-115)

ⁱⁱ As Silk has pointed out, the term 'standing committee' is misleading because these committees do not have permanence. (1989, s. 129)

ⁱⁱⁱ After committee stage, the chairman of the committee reports to the General Assembly on the committee deliberations, but he/she does not give a written report. Although a procedure exists to give a written report about the committee negotiations, this method is not in use. Normally the bill return back to the General Assembly in the form in which it left committee and report stage allows all the MP, to speak on the amendments, and so to have opportunity for changes to be made. The amendments to be debated in the General Assembly are chosen by the Speaker and all the House members get one more chance to amend the text. (Silk, 1989, s. 128-136)

^{iv} While it is difficult to distinguish between the whole House and a committee of the whole House, there are some differences. The first is that Speaker's chair is empty in the House and the second difference is that the rules are more flexible than they are in the House (Bradshaw & Pring, 1981, s. 224-225). In this case, the House transforms into a committee of the whole House and then the committee and plenary stages actually become the same thing. Speaker does not transform into the chairmen of committee; the committee is presided by the Chairman Ways and Means. (Silk, 1989, p. 128)

^v In rationalised parliamentary systems, committees may share different burdens. In Netherlands, for instance, standing committees play an important role in maintaining a continuous relationship between the Chamber and the Government. (Raalte, 1959, s. 171)

^{vi} Below, this issue will be discussed in detail.

^{vii} These amendments were the most comprehensive changes made in 1973 RP until 2017.

^{viii} It should be kept in mind that these countries are only examples and that the number of these examples can be increased: For example in the Australian Parliament there is no such kind of division. (Bakırcı, 2013, s. 1222)

^{ix} This table is produced from: (Bakırcı, İspanya Parlamentosu'nun Yapı ve İşleyişi Üzerine, 2014, s. 41)

^x Members of GNAT have no right to submit amendments in the committees and therefore there is a big difference between MoP and committee members in terms of participation in legislative process.

^{xi} The committees in the British system generally are known as *Standing Committees* but since 15 November 2006 they have been given a new name: *General Committees*. *Standing Committees on Bills* are now called as *Public Bill Committees*. (UK Parliament, 2018)

^{xii} Each committee is called by a letter of the alphabet.

^{xiii} This figure derived from: (UK Parliament, 2018)

^{xiv} In fact, this solution was adopted in the RP Reconciliation Committee, which was set up in 2009 to amend wholly the RP of GNAT. However, the proposal prepared by this committee could not be discussed in the GNAT.

^{xv} The Bureau of the Assembly shall be composed of a Speaker; four vice-speakers; seven secretaries; and three quæstors. (RP, art. 9)

^{xvi} Derived from: (Bakırcı, 2014, s. 17-21)

^{xvii} Article 72- If there is no other provision in the Rules of Procedure, all political party groups and two deputies have right to speak on every subject on behalf of themselves.

^{xviii} Although it is not defined in the RP, these four persons, in practice, are called as bureau of the committee.

^{xix} I will use Table 1 to prove the need to work more and more.

^{xx} This table has produced from two sources. For GNAT the figures are taken from the unpublished archive of the Directory of Minutes in GNAT. For UK Parliament the figures are taken from: (UK Parliament, 2018).

^{xxi} This figure was taken from a book: (Silk, 1989, s. 121)

^{xxii} This figure most probably belongs to the years of 2010 and 2011 because there is no any other figure for the year of 2010.

^{xxiii} This year was the election year for the GNAT and it did not work in this year.

^{xxiv} In fact, there were package laws in the 1990s. But their subject was tax regulations. For the first time, package laws were introduced, which were related to the theme of fundamental rights and freedoms.

^{xxv} Similar regulations can be found in different countries; for example in the U.K. Parliament, irrelevant amendments to the subject matter or beyond the scope of the bill are eliminated by the Speaker in the General Assembly stage. (Griffith, Ryle, & Wheler-Booth, 1989, s. s. 232)

^{xxvi} For this reason, omnibus bill is legally defined in the RP of Congress.

^{xxvii} This solution, also, was adopted in the RP Reconciliation Committee, which mentioned above.

^{xxviii} For example, while the amount of time required to discuss a 10-article bill is around 40 hours, the time required for the basic law with the same article is around 10 hours. (Bakırcı, Kanun Yapım Tekniği ve Torba Kanun Uygulaması, 2013, p. 39.)

^{xxix} This table has been produced and summarized from another study. For the entire table look: Bakırcı, TBMM Genel Kurulunun Birleşimi ve Gündemi Üzerine, 2008, p. 420-421, Table 1.

^{xxx} I have called this method as "*teklif görünümlü tasarı*" (*bill in appearance of proposal*) by making an analogy to "*Doğan görünümlü Şahin*" (*Şahin in the appearance of Doğan*) in Turkish language. (Bakırcı, 2013). *Doğan* and *Şahin* are the names of two birds in Turkish language. Tofaş Car Company used these names as its car models. *Doğan* is a better, and therefore more expensive, car model in market. Therefore, in order to take advantage of the *Doğan* model, some people rectify their *Şahin* model by creating similarities between the two models.

^{xxxi} These amendments made to Constitution will enter into force in three different dates: (1) After adoption of Law No. 6771 in April 16, 2017 by referendum, (2) when the election process starts concerning simultaneous elections of the GNAT and President of the Republic (3) when the President of the Republic assumes office after the mentioned elections. Therefore, the impact of amendments will probably emerge after the 2019 elections.

^{xxxii} Yılmaz argues that (2018, s. 79-80) mutual dissolution has designed to overcome a possible system crisis, when the president and the majority of the legislature are of different political tendencies. He states that *in general, the presidential system leads to government stability, but to ensure political stability, it needs instruments to sustain the system in case of possible crises and conflicts*. As a result, He concluded that for the sustenance of the democratic system, *it is necessary to resort to the power of mutual dissolution in, such as a political gridlock, instead of using the power for personal political interests*. By these claims he ignores the rationale of presidential system because to ensure a presidential system, each branch should impose checks on the other without fear of jeopardizing its own existence (Shugart & Carey, 1992, s. 18-19). And *the power of mutual dissolution, even in exceptional cases, causes the fear of jeopardizing its own existence*.

^{xxxiii} Of course there are a plenty of mechanisms that make possible to have collaboration among legislative bodies and each country may have special kinds of them. For example in Netherlands any government bills goes to the Council of the State before submission to the Chamber for taking its advice (Raalte, 1959, s. 125).

^{xxxiv} Some examples of the opposition days are: Big City Hospitals, Cancer Screening for Woman at Risk, Caring for the Carers, Crime, Education, Housing Crisis and Urban Deprivation, Poverty amongst the Elderly, Regional Strategy, and Transport (Griffith, Ryle, & Wheler-Booth, 1989, s. 342).

^{xxxv} Quoted bu Tunaya, from Sir Ivor Jennings, *Cabinet Government*, p. 16.