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Presidentialism vs. Parliamentarism in Turkey

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Executive Summary

While Turkey is in the midst of a constitution-making process, the debate has re-sparked over the switch to a presidential or semi-presidential system. This brief cautions against this change for two reasons. First, Turkey currently does not have a classic parliamentary model, as the 1982 Constitution endowed the presidency with substantive powers. It has been described as a “hybrid” system between parliamentarism and semi-presidentialism. With the constitutional amendment of 2007, the system of government was brought one step closer to a semi-presidential system. Second, although the proponents of a semi-presidential or presidential system invariably describe the parliamentary system as prone to crises and deadlocks, governmental instability, ineffectiveness, and *immobilisme* are not the necessary fate of a parliamentary government. In fact, it is a semi-presidential system, particularly when the presidency and the parliamentary majority are controlled by opposing parties, which is particularly vulnerable to crises and deadlocks. The recent debate on parliamentarism vs. presidentialism in Turkey appears to be largely artificial and inconsequential. Turkey certainly needs a new constitution to solve its many problems and to raise its democratic standards. The debate on parliamentarism vs. presidentialism is not one of these issues and it should not distract attention from more urgent questions.

While Turkey is in the midst of a constitution-making process aimed at replacing the military-drafted 1982 Constitution with a new civilian constitution, a key twist to the saga was added when Prime Minister Recep Tayyip Erdoğan suggested in a TV interview on 6 June 2012 that a change to a presidential or semi-presidential system should be discussed. Actually, this debate is not new. Former Presidents Turgut Özal and Süleyman Demirel also advocated such a change in the 1980s and 1990s. These proposals were not energetically pursued, however, and the system of government established by the 1982 Constitution remained essentially in place, with the exception of an important revision in 2007 discussed below.

Indeed, the system of government established by the 1982 Constitution was far from the classical parliamentary model. The essential features of such a system are the political responsi-

lity of the council of ministers to parliament, and an essentially symbolic head of state, whether a constitutional monarch or a president of the republic. Even though the executive power is shared between the president and the council of ministers, the source of authority and policy-making power lies clearly in the latter. The head of the state is politically unaccountable, and his/her criminal responsibility even in parliamentary republics is normally limited to cases of high treason. This, in fact, means that the head of state is devoid of any significant political power, since according to a cardinal principle of public law, power and responsibility must go hand in hand. This is assured by the principle of “counter-signature”, according to which the head of state is not authorized to act alone; in other words, all his/her acts have to be counter-signed by the prime minister and the minister(s) concerned who assume political and criminal responsibility for such acts. Therefore, the role of the head of state in parliamentary systems is essentially symbolic and ceremonial.

The 1982 Turkish Constitution departed significantly from this model by creating a presidency endowed with substantive political powers. Article 104, which enumerates the powers of the president of the republic, is the longest article of the Constitution, and endows the president with powers in legislative, executive and judicial domains. Even though the principles of counter-signature and the political responsibility of the council of ministers to parliament are maintained, the Constitution allows the president to act alone in certain cases without, however, specifying such cases (Art. 105). While some of the powers enumerated in Article 104 are ceremonial in nature, such as making an inauguration speech at the beginning of each legislative year, publishing laws, appointing the prime minister, acting as the commander-in-chief of the Turkish armed forces on behalf of the Turkish Grand National Assembly, and so on, many others involve the exercise of substantive and discretionary political authority. Especially noteworthy in this regard are his/her powers pertaining to the judiciary and the higher education system. The president is authorized to appoint the judges of the Constitutional Court, one-fourth of the judges of the Council of State, the Chief Public Prosecutor of the Court of Cassation and his deputy, judges of the Military Court of Cassation and of the High Military Administrative Court, and certain members of the High Council of Judges and Public Prosecutors. Similarly, s/he is authorized to appoint university rectors and

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the members of the Board of Higher Education (YÖK). In many of these cases, the president's authority is limited to selecting one of the candidates nominated by other bodies, such as the relevant high courts or the YÖK, but presidential power in these cases is nonetheless substantive.

Thus, the governmental system created by the 1982 Constitution was far from the classical parliamentary model. Consequently, it has been described as a "hybrid" system between parliamentarism and semi-presidentialism, or, borrowing a French term, as "attenuated parliamentarism" (*parlementarisme atténué*). The reason behind such a choice was clearly the desire of the governing military council (National Security Council) to create a strong presidency that would exercise a tutelary supervision of the elected bodies: the parliament and the council of ministers. General Kenan Evren, Chairman of the Council and Head of State in the interim period, strongly advocated a president who would act as an "impartial arbiter", a clear expression of his and his colleagues' distrust for elected politicians. To ensure this, he secured his election to the presidency by combining the referendum on the Constitution with the election of the president. Thus, a "yes" vote for the Constitution also meant a "yes" vote for Evren's presidency for a seven-year period (1982-1989). Probably, the military council had hoped that, even after Evren's term of office, another military figure or at least a civilian acceptable to the military would be elected as president, and thus the president's tutelary role would continue in the foreseeable future.

But this plan did not work out. After Evren's term of office came to an end, all three presidents elected by the Grand National Assembly were civilians (Turgut Özal, Süleyman Demirel, and Ahmet Necdet Sezer). However, the system of government had a strong potential for creating conflicts between the president and the cabinet, and such conflicts were vividly experienced during the four presidential terms. Even though the presidents did not have substantive "policy-making" powers, the Constitution endowed them with significant veto powers, such as refusing to sign government decrees, returning laws to parliament for reconsideration, bringing about suits for annulment of laws before the constitutional court, submitting constitutional amendments to referendum, and so on.

When Ahmet Necdet Sezer's term of office came to an end in 2007, Turkey experienced a serious constitutional crisis. Under Article 102 of the Constitution in force at that time, a qualified parliamentary majority for the election of the president required a two-thirds majority of all members in the first two rounds, and an absolute majority of all members in the third and fourth rounds. The majority party, the AKP, did not have the sufficient majority to elect its candidate (Abdullah Gül) in the first two rounds, but a comfortable majority to elect him in the third round. However, the military and the entire "secular establishment" were strongly opposed to Gül's candidacy, fearing that his election would endanger the "secular Republic". Consequently, through manoeuvrings of extremely dubious legality and democratic legitimacy, the Constitutional Court stopped the presidential election process. The AKP majority reacted to this by amending Article 102 of the Constitution, with the support of a minor opposition party (Motherland Party – ANAP), introducing popular election of the president for a maximum of two five-year terms. The constitutional amendment was submitted to referendum by the outgoing President Sezer and



was approved by a 69 percent majority. However, before the amendment entered into force, the newly elected Grand National Assembly duly elected Gül under the previous rules.

Thus, with the constitutional amendment of 2007, the system of government was brought one step closer to a semi-presidential system. Indeed, semi-presidentialism can be defined as a system which combines a popularly elected president, who is endowed with significant substantive constitutional powers, with a council of ministers, which is responsible to parliament. In other words, it combines certain features of parliamentarism with those of presidentialism, but in contrast to presidential systems the division of powers is not so much between the legislature and the executive, but within the executive itself, that is between a popularly elected president and a council of ministers dependent on the confidence of the parliament. Therein lies the most problematic feature of semi-presidentialism. If on the one hand, the president and the parliamentary majority belong to the same party or political tendency, the system can be expected to function reasonably harmoniously. If, on the other hand, they belong to opposing tendencies, the system has the potential of leading to constant conflict within the executive. One possible way out of this crisis would be for the president to dissolve the legislature in the hope that elections would lead to a more cooperative parliamentary majority. Clearly, however, there is no guarantee of such an outcome. Another solution would be the withdrawal of the president to a more passive role in the face of an adverse parliamentary majority, as observed in the periods of *cohabitation* in the Fifth French Republic.

In face of the current arrangement in Turkey which combines a popularly elected president possessing wide and substantive powers with a cabinet responsible to parliament, it is not clear what the advocates of a "change" to a semi-presidential system actually propose. The present arrangement already meets the essential requirements of such a system. If its proponents suggest giving certain additional powers to the president, they have not so far clarified what these would be. Some Justice and Development Party (AKP) representatives have called for the appointment of the prime minister by the president. However, this is already a power assigned to the president under current regulations. Of course, such power is not absolutely discretionary. The president has to appoint someone who is likely to obtain a vote of confidence from parliament, which is one of the essential requirements of all semi-presidential systems. If what is meant is the abolition of the requirement of a parlia-

mentary vote of confidence, such a system would no longer be semi-presidential system; it would be a presidential system in disguise.

Among possible additional powers, one may also think of giving the president an absolutely discretionary power to dissolve the legislature to hold new elections. However, the present Constitution (Art. 116) already gives the president such power subject to certain conditions, such as the failure to form a new government within 45 days. Even though this is a conditional power, it is conceivable that a president can create conditions for a dissolution by appointing persons unlikely to obtain a vote of confidence and thus satisfy the 45 days requirement. Another possibility is to add a provision to the constitution to the effect that the president normally chairs the council of ministers meeting as in France. Nevertheless, this too would not represent a significant change, since under the present arrangement, the president can chair such meetings whenever s/he deems necessary or can call for a meeting under his/her chairmanship (Art. 104). In certain cases, such as the declaration of martial law or state of emergency and the adoption of emergency decrees in such periods, the president's chairmanship of the council of ministers meetings is obligatory (Arts. 104, 119-122).

The proponents of a semi-presidential or presidential system invariably describe the parliamentary system as prone to crises and deadlocks. What critics probably have in mind is the rather unhappy coalition government experiences in the 1970s and the 1990s. However, governmental instability, ineffectiveness, and *immobilisme* are not the necessary fate of a parliamentary government. In many countries parliamentary governments work efficiently with single-party governments or reasonably harmonious coalition governments. Turkey has had stable and effective single-party governments between 1965-71, 1983-1991, and since 2002. Indeed, the parliamentary system incorporates mechanisms precisely to avoid persistent deadlocks. If the parliamentary majority supporting the government changes for reasons such as defections from the majority party or the break-up of a coalition, the vote of censure and the power of dissolving parliament are the two mechanisms to end the crisis and enable the formation of a new government that would reflect the new parliamentary majority.

In contrast, neither the presidential nor the semi-presidential systems incorporate such deadlock-solving mechanisms. As mentioned above, the semi-presidential system, particularly when the presidency and the parliamentary majority are controlled by opposing parties, is particularly vulnerable to crises and deadlocks. Presidential systems where the president and the legislature are elected separately by the people for fixed terms and have no power to end each other's term in office, certainly ensure maximum executive stability and harmony within the executive. Instead, the president is often dependent upon the approval of the legislature for new laws s/he needs in order to pursue his/her political projects, and for his administration's budget. Again, if the two branches are controlled by opposing parties, there is no constitutional mechanism to end the deadlock. The Turkish advocates of a presidential system evidently have the US model in their mind. However, the success of the American model is due to the unique nature of American parties and the party system, not to constitutional arrangements. The loosely organized, non-ideological, undisciplined, and pragmatic nature of American political parties makes it pos-

sible to reach compromise even when the two branches are controlled by different parties. Thus, some authors have argued that the American system works reasonably well not because but in spite of the American Constitution. Clearly, this does not apply to countries where ideological differences among parties run deep, and parties are strongly organized and disciplined entities. In conclusion, the recent debate on parliamentarism vs. presidentialism in Turkey appears to be largely artificial and inconsequential. Turkey certainly needs a new constitution to solve its many urgent problems and to raise its democratic standards to a much higher level. The debate on parliamentarism vs. presidentialism is not one of these issues, and it should not distract attention from more urgent questions.