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STABILIZATION OF THE PARLIAMENTARY SYSTEM IN TURKEY

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Towards the end of 1960s, the theoretical problems of the state and parallel to that, the institutional approach to politics, had been totally removed from the focus of political scientists. It is really surprising because the executive-legislative relations play a very important role in all political systems and notwithstanding the political creeds of those holding political power. And the powers of the executive organs of the state has grown stronger during the past hundred years in the world. Then what explains this neglect?

The executive-legislative relations have been neglected mainly because of the caprices of academic fashion. The marxist and the western political thinking in a different way but in a same conclusion have discarded the problems of executive-legislative relations as an old-fashioned concern. What Anthony King says on executives are generally true about the institutoinal approach in politics:

«In recent years intellectually ambitious researchers have tended to move into fields such as voting behavior mainly because relevant data are available but also because in such fields it is not difficult to identify the intellectual challenges» (1).

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(1) Anthony King, Executives, in Fred I. Greenstein and Nelson Polsby, eds., *Handbook of Political Science*, Vol. 5, Reading, Mass. : Addison-Wesley Publishing Company, 1975, p. 174.

Then what we need to know is what intellectual challenges are in the field of executive-legislative relations. One of the purpose of this article is to suggest and try to answer, at least tentatively, some of them in the context of the Turkish political and constitutional experience.

According to Karl Loewenstein well balanced constitutional order must not prevent the dynamism of the political process, operated by reciprocal controls of the power holders, from leading to constitutionally insoluble stalemates, either within one and the same or among the several power holders (2). The author says that the maximum reciprocal controls assigned to the several organs of the state does not necessarily coincide with the optimum required for the efficient and stable operation of the political process and the excessive sharing of functions (i.e. checks and balances) may lead to the self destruction of constitutional government (3). We may hypothesize that the well balanced executive-legislative relations in parliamentary systems must not prevent the efficient and stable operation of political process from leading to constitutional deadlocks.

Deadlocks may arise when the executive-legislative organs of the state are so evenly matched that, if they cannot cooperate, a constitutional crisis will evolve that can be resolved only by resorting to illegality and force. In order to continue the political process, one of the actors of the political process who feels himself the strongest necessarily will establish his ascendancy over the others. Of course, the one who feels the strongest will be the armed forces in developing countries or whose popular support is superior to the others in the political process of the country. In the deadlocked state machinery one of the actors of the political process will take command either by arbitrary extension of his constitutional prerogatives or by an extra constitutional coup d'état. If we do not want to have grave constitutional crises then the constitution of the country must provide the constitutional solutions of deadlocks between the executive and legislative organs of the state.

(2) Karl Loewenstein, **Political Power and the Governmental Process** Chicago, University of Chicago Press, p. 278-281.

(3) Constitutional government is not necessarily identical with constitutional democracy. By constitutional government, we mean a system in which political power is shared and reciprocal controls are legally established among the several branches of the state. But constitutional democracy must be based on effective and widespread political participation by the people.

Deadlocks may arise within and the same organ of the state, which are relatively rare, and among the several organs of the state. The latter category includes the stalemates between the legislative and executive or between both joined together and the courts. From the point of the view of the political process the important political conflicts are between the government and parliament. Our brief constitutional history will reveal this point.

I. PARLIAMENTARY and PRESIDENTIAL FORMS OF GOVERNMENT.

In constitutional democracies mainly two forms of government are adapted: presidential and parliamentary governments (4). Parliamentary government is the form of constitutional democracy in which executive authority emerges from legislature and responsible to it. This form of government differs from the arrangement of independently elected executive and legislative organs found in the United States and the Latin American countries. The government of the United States is presidential in the sense that its presidency enjoys the vital position and occupies the central place among the other public institutions. But parliamentary government denotes a form of government in which constitutionally the legislature is the supreme authority and in practice, despite the continued increase in executive power almost in all the states in the world, exercises considerable influence in political affairs (5). The reason of this significant influence is the union of executive and legislative branches and the constitutional principle of legislative supremacy.

In parliamentary government the prime minister is appointed by a monarch or president of republic (head of state) and the prime minister in turn chooses the executive heads of government (ministers). The most important business of the state rotates around the proposals of the cabinet. Cabinet does not comprise all the executive heads of the government but only the important ones. Both the prime minister and his cabinet, is usually, called together as the government and they generally the members of parliament.

(4) There is also one more form of government which we call "gouvernement d'assemblée" (assembly government). In this form of government the power concentrates in the assembly (legislature) and at least in theory there is no separate executive. See Douglas V. Verney, *The Analysis of Political Systems*, London, Routledge and Kegan Paul Ltd., 1959, p. 57 - 74.

(5) See Leon D. Epstein, *Parliamentary Government*, in *International Encyclopedia of the Social Sciences*, Vol. 11., New York, The Macmillan and the Free Press, 1968, p. 419.

The cabinet is headed by the prime minister. He is the leader of the cabinet and the cabinet is his choice. In parliamentary systems, ceremonial head of executive (monarch or president of republic) is different from the real executive who does the work of government and prime mover. The prime minister and his cabinet hold ministerial office as long as they have majority support in the parliament. A defeat in the legislature on a matter of confidence necessitates the cabinet either to resign or to dissolve the parliament and go to the elections. If a general election returns a majority against it, government have to resign. A government can stay in office only with parliamentary support for its policies. A government without parliamentary support may stay in office only temporarily and in political science, we call it «caretaker government» (6). Deadlock between an executive and a legislature as occurs in presidential governments means the death of parliamentary system. But the instability of executive is possible in the minority or coalition mode of parliamentary governments.

Coalition or minority mode of parliamentary government is similar to majority one in every aspect except the government in this system relies on for the support in parliament not of a single party, but of two or more parties. In this mode of government parties may form a coalition government or one or more of them may remain outside and support the minority government with their votes. Of course this type of government gives great power (but not accountable, to only one) to the legislature because the parliament may both refuse to enact legislation of government and may refuse also to topple it. In presidential government parliament may refuse to enact the legislation but cannot «overthrow» the chief executive. For above reasons, minority or coalition government mode would seem more unstable and more inefficient than presidential or majority parliamentary government.

(6) See Claude Klein, "The Powers of the Caretaker Government", *Israel Law Review*, Vol. 12, No: 3 (July 1977), p. 271-287.

II. EXECUTIVE - LEGISLATIVE RELATIONS UNDER THE CONSTITUTION of 1961.

The Constitution of 1961 had been drafted and formulated by the Constituent Assembly (7) and was adapted by popular vote on July 9th, 1961. More than 6 million people voted for but nearly 4 million people voted against it. Most of the articles of the 1961 Constitution were inspired by the West German, Italian and the Fourth French Republican Constitutions.

The Constitution of 1961 was a reaction against the constitutional deficiencies and abuses prevailed during the period of 1950 - 1960. For this reason, the parliamentary form of government with a separation of powers, rejection of the principle of «assembly supremacy» (8), a bicameral system, the supremacy of the judiciary (judicial control of the constitutionality of laws) were the new institutions and the ways adopted by the 1961 Constitution to prevent the occurrence of the omnipotence of the assembly from which Turkey had previously suffered much. After the general election of 1950 the system of 1924 had led in practice to a single all powerful assembly and this in fact led the omnipotence of a majority party (9). The 1961 Constitution aimed to limit the action of a popularly elected single house.

According to the 1961 Constitution the government was composed of the President of the Republic and the Council of Ministers. And the Council of Ministers was consist of the prime minister and the ministers. The article 6 of the Constitution stated that the executive function was to be exercised by the President of the

(7) The Constituent Assembly was composed of the National Union Committee and the House of Representatives. The members of the House of Representatives were 275, 28 members were elected by the Head of State and the National Union Committee, 75 members were elected by the provinces (by indirect election), 74 by the political parties, 79 by various organizations such as bar associations, trade unions (including farmers), universities and the press. Members of the Council of Ministers were also included in the House of Representatives. It was this Constituent Assembly which written the Constitution of 1961.

(8) The Constitutions of 1921 and 1924 established the "Grand National Assembly" as the main pillar of the government and they provided that sovereignty vested in the nation without reservation and condition. The nation could exercise its sovereignty through the "Assembly". The 1921 and 1924 Constitutions stated that legislative and executive powers concentrated and manifested in the Turkish Grand National Assembly. That was the system of "gouvernement d'assemblée". For more information see Mumtaz Soysal, *Anayasaya Giriş*, Ankara, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayını, 1969, p. 151-188.

(9) Münci Kapani, *Millî İrade Efsanesi*, *Milliyet*, 27 Şubat 1966.

Republic and the Council of Ministers. But in fact, the President of the Republic had all the ceremonial functions and had nothing to do with the use of executive powers. The real head of the executive branch was the prime minister and his cabinet under the Constitution of 1961.

The President of the Republic was elected by the Turkish Grand National Assembly from among its members, election would be secret ballot and by a two thirds of majority of the plenary session of the Grand National Assembly. In case this majority was not obtained in the first two ballots an absolute majority would suffice (Article 95). After the election, the President and the parliament were isolated from each other. According to article 98 «the President of the Republic shall not be accountable for his actions connected with his duties. All decrees emanating from the President of the Republic shall be signed by the Prime Minister and the relevant Ministers. The Prime Minister and the Minister concerned shall be responsible for these decrees». That means that under the 1961 Constitution the real executive was the Council of Ministers (prime minister and the other ministers).

The Prime Minister was appointed by the President of the Republic from among the members of either house (the National Assembly and the Senate of the Republic). Although it was not clearly stated in the Constitution, in conformity with the general rule of parliamentary government the President had to select a prime minister who was capable of commanding the support of majority, at least, in the lower house of the parliament (National Assembly). But the Prime Minister could be chosen from among the members of the upper house (Senate of the Republic). The other ministers were chosen by the Prime Minister from among the members of either house or from outside the Grand National Assembly (10). Under the 1961 Constitution if the party of Prime Minister had a majority in the National Assembly then he had complete authority to decide who would be members of his Council

(10) Some members of the Constituent Assembly objected to the possibility of electing ministers from outside the Grand National Assembly. They said that in a parliamentary system ministers should be definitely elected from among the members of the Assembly. They also insisted that to bring a minister from outside the Assembly as "technician-minister" would be harmful to the parliamentary system in Turkey and according to them ministers should be primarily politicians rather than technicians. See Kâzım Öztürk, *Türkiye Cumhuriyeti Anayasası*, Vol. 3, Ankara, Türkiye İş Bankası Yayını, 1969, p. 2928 - 2929.

of Ministers (cabinet). But if a coalition government had to be formed, the freedom of the Prime Minister was restricted by the parties in coalition. The ministers chosen by the Prime Minister were appointed **formally** by the President.

The first task of the Prime Minister after having presented the list of members of his Council of Ministers to both houses, was to submit the program of his government for the approval of the lower house. In order to carry out the program and the policy of the government, the Prime Minister had to obtain a vote of confidence from the National Assembly. The procedure of a vote of confidence was arranged in such a way that the advantage was with the government; since an ordinary majority of the members of the National Assembly was sufficient. At that time it was thought that it was not always difficult to obtain such a majority.

As stated by the 1961 Constitution the Prime Minister as head of Council of Ministers «promotes cooperation among the ministers, and supervises the implementation of the government's policy» (article 105). And he was the only one who could decide after discussing the matter at the Council of Ministers, when to request a vote of confidence from the Assembly. The Council of Ministers was collectively responsible for the general policy of the government: the acts of each minister were the acts of all, and all stand or fall together. Every minister had the obligation to refrain from opposing the decisions of the government and to support them with all his energy. If the government was a coalition or a minority government it was possible for the Council of Ministers to leave certain matters and questions «open» in which ministers were free to say what he wanted and to differ from the others. It should be noted that the ministers were also responsible for the conduct of affairs in his field of authority and for the actions and activities of his subordinates. In conclusion we may say that the Council of Ministers as a whole body had to wield power as the major executive organ of the state.

According to the Constitution of 1961, the Council of Ministers on the one hand and the houses on the other hand had powers to use against each other. The Grand National Assembly through its powers of control (such as «questions», «interpellations», «vote of censure», «Parliamentary inquiry», and «parliamentary investiga-

tions») (11) might exercise an influence over the activities of the Council of Ministers. And the Council of Ministers, through the power of dissolution, might balance the legislative organ of the state. But the right of dissolution was only available to the Prime Minister under conditions most difficult to realize (12). According to the Constitution, the Prime Minister could not request from the President new general elections for the Assembly, unless the Council of Ministers had been unseated twice by a vote of no-confidence within a period of 18 months and after that if the Council of Ministers was subject to a vote of no-confidence of the National Assembly for a third time. This means that the right given to the executive to dissolve the Assembly was practically ineffective and never used in the life of the Constitution (13). There were no constitutional limits on the National Assembly's power to deny the legislation of the Council of Ministers. The National Assembly might refuse to pass the legislation introduced by the government. Assembly had also very efficient power against the government: the vote on the budget. If the budget was refused by the parliament, the government was left without funds. If we add to all these factors the consequences of the proportional representation (after 1970s, no party had secured a comfortable majority in the Assembly because of the proportional representation, we should not surprise that the cabinet crises had occurred in Turkey.

(11) For more information on this subject see Ergun Özbudun, **Parlmanter Rejimde Parlamentonun Hükûmeti Murakâbe Vasıtaları**, Ankara, Ankara Üniversitesi Hukuk Fakültesi Yayını, 1962; Erdal Onar, **Meclis Araştırması**, Ankara, Ankara Üniversitesi Hukuk Fakültesi Yayını, 1977.

(12) See İlhan Arsel, Constitutional Law, in **Introduction to Turkish Law**, eds., Tugrul Ansay and Don Wallace, Ankara, Society of Comparative Law, 1966, p. 44-45.

(13) It is important to note that, the drafters of the 1961 Constitution tried to make executive as stable and effective as possible. They tried to do this through a system of balances which should work, in their opinions, in favor of the executive. For example, according to article 89 of the Constitution the National Assembly could not force the Council of Ministers to resign except upon a vote of no-confidence which was subject to cumbersome procedures. But we must confess that contrary to preference for the stable executive by the Constitution, the parliamentary form of government in Turkey has tended to become an "assembly government": the legislature became the most important power in the state. Then weak executives followed one another. It must not be forgotten that the Constitution had theoretically denied the supremacy of the parliament. But the executive and legislative organs of the state were so evenly matched that they could not cooperate in the governmental crises in Turkey.

III. WHAT WAS WRONG IN THE EFFORTS OF THE STABILIZATION OF THE PARLIAMENTARY GOVERNMENT IN TURKEY?

We may say that the Constitution of 1961 could not establish a well balanced executive-legislative relations and that prevented the efficient and stable operation of the political process in Turkey. The executive and legislative organs of the state in Turkey were so evenly balanced that they could not cooperate so constitutional crises evolved. And the Constitution could not provide the constitutional solutions of deadlocks between the executive and legislative organs. Something was going wrong in the efforts of the stabilization of the parliamentary government in Turkey.

After 1970s, Turkey has become a self-divided nation and political opinion has turned into extreme ideological forms. The result has been drastic instability and mainly two form of opinion emerged. The first of these has always emphasized representation and accountability in political affairs and defended the Constitution of 1961. The other one has stressed «the law and order» as the most important problem in the Turkish society.

Turkey is one of the most rapidly changing countries of the world. Since Atatürk, in half a century, very important social, economic and political changes have occurred. And as we all know, no change can occur without trouble and pain and rapid changes will cause more trouble and pain (14). Turkey's appearance from 1960 to 1976, from the point of view of economic growth was an uninterrupted growing country. Although economic growth was not in good order because of political disorder, between 1966 - 1970 (if it is compared with the period of 1962-65) still Turkey was a growing country in the world until 1976. But after 1977 economic growth began receding sharply.

After 1960 parliamentarians have become more representative of the society (15). And this caused the reflection of pluralism of the society to the political elites. We may say that mainly the source

(14) The powerful thing is to transform the trouble of change into Turkey's liberation, from the angle of economic and political problems. Under such conditions political elites hold a position of heavy responsibilities.

(15) See Mehmet Turhan, *Siyasal Elit Değişimi, Basılmamış Doktora Tezi, Ankara, 1981, passim*; Frank Tachau, Turkey, in Jacob M. Landau, Ergun Özbudun and Frank Tachau, eds., *Electoral Politics in the Middle East*, Stanford, Hoover Institution Press, 1980, p. 238 - 239.

of this pluralism comes from social and economic reasons. In Turkey center-periphery cleavages are giving its place to new conflicts which are based on social and economic cleavages. This change has also magnified political polarization and ideological differences in the Turkish society. Parliamentarians reflected this polarization as it was without any change and never tried to solve it.

In political crises how political elites will behave largely depends on whether the political system in that country is strong and well balanced. Countries who have a strong and well balanced political and social systems may overcome crises by changes in policies and without changing the bases of elite recruitment. In young and noninstitutionalized systems and where democracy and parliament are not the product of lower classes, like Turkey, the social and generational bases of political elite recruitment must almost always be changed. If the system cannot do it in a peaceful way then the political elites of that country will be confronted the danger to be overthrown by counter-elites.

In young democracies, in above mentioned crises situations, it is pretty difficult to find a solution to the polarization in society without reflecting it in the parliament. The operation of a consensual democratic system depends on more or less equal income distribution and strong and institutionalized organizations which represent social and economic groups in society. But in developing countries political elites do not have enough economic strength for satisfying the increasing demands of new social forces.

We have to add that not only social and economic changes cause political crises but also, as stated by Juan Linz, the quality of individual leadership, problem solving behavior, and the political strategies of the chief executives (political elites) plays an extremely important role in the process of breakdown of democratic regimes. In the case of breakdown, political elites wittingly or unwittingly, contribute to the erosion of democratic regime (16). It is very difficult to predicate when and how political elites will make such generally, gives the answers of this question but of course after watchful and prudent or neglectful and careless decisions. History, decisions are taken and applied. In Turkey political leaders, unfortunately, largely assisted to the breakdown of democratic regime.

(16) Juan Linz, *The Breakdown of Democratic Regimes*, in Juan Linz and Alfred Stephan, *The Breakdown of Democratic Regimes*, Baltimore, The John Hopkins University Press, 1978.

Now we have to discuss the role of the Constitution of 1961 in the process of the breakdown of democratic regime. The followings are the causes of acts of wearing out the 1961 Constitution: First of all, while the Constitution was prepared the significant and politically important part of the population and their leaders was excluded (in the drafting of the Constitution) and this caused the later dissensus on the rules of the political system. The excluded part of the leaders opposed the Constitution from the outset and they presented the Constitution as an obstacle in their ways. When this form of opinion came to power they stressed «the law and order» and held the Constitution responsible for their failures. And the ones who defended the Constitution exaggerated the limitative aspects and functions of the Constitution and they could not show the positive content of the Constitution. For this reason, this form of opinion largely lost its credibility in the society. The defenders of the Constitution had talked to halt terrorism before they came power but they could not prevent subversive and separatist activities designed to break up the democracy. This situation helped the opinion that the nation suffered in late 1970s because of the liberal 1961 Constitution who rendered the executive branch of government powerless. In the period of 1961 Constitution, parliamentary political struggle unnecessarily depended on the Constitution and this stopped the dynamism of the political life in Turkey. All these above mentioned factors overloaded the 1961 Constitution (17).

We may safely say that the 1961 Constitution was tattered by the weak executives and the Constitution had very little responsibility for this powerlessness. The source of this weakness was in the legislature. In parliamentary systems, as S. E. Finer says, the executive is the powerhouse of the entire governmental system (18). But the executive acts by and with the consent of the legislature and latter always gives that required consent because the executive is formed from its majority. So in reality the majority party is the powerhouse of governmental system. But in Turkey there was no such majority in the legislature because of the electoral system (19). And weak cabinets could not able to deal effectively with a severe economic crises and bloody political violence bordering on civil war.

(17) **Gerekçeli Anayasa Önerisi** (Ortak Çalışma), Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayını, Ankara, 1982, p. 203 - 215.

(18) S. E. Finer, **Comparative Government**, Harmondsworth, Penguin Books, 1970, p. 172 - 173.

(19) With the wrong decision of the Turkish Constitutional Court, D'Hondt without any barrage

Turkey's military commanders assumed power from Premier Süleyman Demirel's coalition government in a bloodless coup on September 12, 1980 and disbanded the parliament with the stated purpose of stopping the bloodshed that was claiming 20 lives at the time of the takeover. From the outset the military promised a return to full democratic rule. To pave the way back, the military set up a Consultative Assembly to draft a new Turkish Constitution (20). And on November 7, 1982 the new Constitution was adapted in a national referendum, with more than 91 percent of the voters.

IV. THE EXECUTIVE - LEGISLATIVE RELATIONS UNDER THE CONSTITUTION OF 1982

General Kenan Evren, the President of the Republic, says the following on the purpose of the executive under the new Constitution :

«The sole purpose of the powers invested in the president and the council of ministers under the new Constitution is to enable the executive branch of the government, which was rendered powerless by the 1961 Constitution, to function efficiently and purposefully in the light of the broad range of services expected from it as in every country. One can hardly suggest that the state truly exists in a country where the executive branch of government is deprived of the means to take initiative» (21).

became nearly a constitutional principle, prevented the formation of cabinet with a workable majority in the legislature. Throughout the 1970 s, Turkey was ruled by a series of shaky coalition governments that culminated in virtual paralysis of the parliament by the end of the decade. There is no guarantee that any electoral system can secure a governmental stability but proportional representation does greater justice to minor parties and discourage the formation of governments with a workable majorities.

(20) The new Constitution was also drafted by the Constituent Assembly. The Constituent Assembly was composed of the National Security Council and the Consultative Assembly. The National Security Council, which replaced parliament, is consisted of the Army, Air Force, Navy, and Gendarmeria Forces, under the chairmanship of Chief of General Staff General Kenan Evren. The Consultative Assembly is composed of 160 members, 40 members are directly by the National Security Council. According to the Law about the Constituent Assembly, the main goal was to prepare a new constitution, parties law, electoral law and all other necessary measures and laws to reinstitute democracy in Turkey. It is this Constituent Assembly which written the Constitution of 1982.

(21) Kenan Evren, How to Secure Workable Democracy, *International Herald Tribune*, 25 October 1982 .

According to the 1982 Constitution the executive is composed of the President of the Republic and the Council of Ministers. The President of the Republic is elected for a term of seven years from among those members of the Grand National Assembly who have completed their fortieth years and received higher education or Turkish citizens who display the same qualifications and those necessary for eligibility to become a deputy (Article 101). The Council of Ministers is composed of the prime minister and the ministers. The prime minister is appointed by the President from among the members of the Grand National Assembly. The ministers are selected by the prime minister and **formally appointed** by the President of the Republic (Article 109).

To ensure the executive «to function efficiently and purposefully» the new Constitution relies heavily on the powers of the President and the Council of Ministers. The Constitution puts much power in the hands of the presidency, which has been a ceremonial office before. The President is empowered to dissolve the parliament and call for early elections in case of lengthy governmental crises (22). The President of the Republic may declare a state of emergency and rule by decrees, subject to later approval of the parliament. The President can appoint many high-level officials, including university rectors and supreme court judges (e.g. all the judges of the Constitutional Court are to be selected by the President, from among the candidates nominated by the institutions to which they belong).

All decrees emanating from the President of the Republic, excepting those which are concluded by the President without the signatures of the prime minister and the relevant minister in accordance with the Constitution and other laws, must be signed by the prime minister and the relevant minister. And the President cannot be held accountable for his actions connected with his duties.

- (22) Article 116 states "On the conditions that the Council of Ministers is unseated with a vote of no-confidence in accordance with the articles 99 or 111; in the event that the new Council of Ministers cannot be formed in forty-five days, the President of the Republic, after consulting the Speaker of the Turkish Grand National Assembly, may decide to renew the elections. Also in the events that the prime minister is resigned without unseated with a vote of no confidence or in the event after the newly elected speakership council the Council of Ministers cannot be formed again in forty-five days the President of the Republic, consulting the speaker of the Turkish Grand National Assembly, may call new elections." The article 99 is about interpellations and the article 111 arranges a vote of confidence while the Council of Ministers is in office. Then according to article 116, the Council of ministers must be unseated in accordance to articles 99 and 111.

This means that the President now is not only a ceremonial office. He has real powers.

The prime minister's status is also strengthened compared to the 1961 Constitution. According to article 112, the prime minister frames the general policy of the government and implements the policy of the government in cooperation with the ministers. The Council of Ministers is collectively responsible to the parliament and each minister is responsible to the prime minister and further individually responsible to the parliament for the conduct of the affairs in his field of authority. The prime minister is under obligation to supervise and to take necessary corrective measures in order to ensure that the ministers may fulfill their duties in accordance to the Constitution and laws. The prime minister may propose to the President of the Republic to dismiss the ministers.

The powers of the executive are to some extent circumscribed by references to the continuing supremacy of parliament. For example, article 7 states that «legislative power is vested in the Turkish Grand National Assembly» and this power cannot be delegated. The Turkish Grand National Assembly through its power of control (such as questions, parliamentary inquiry, parliamentary investigations and interpellations) (23) may exercise an influence over the activities of the Council of Ministers. But parliament after electing the president cannot supervise him because the president in accordance with the tradition of parliamentary system cannot be held accountable for his actions. But there is a important contradiction: In parliamentary systems, the President or monarch cannot be held accountable but all the decrees coming from him is signed by the prime minister or the relevant minister. Under the 1982 Constitution the President is not a ceremonial figure, he may conclude some decrees (and important ones) without the signatures of the prime minister.

- (23) Now it is more difficult to unseat the government by using the device of interpellation. Because the motion of interpellation is made either in the name of a political party (a political party group must consist of at least 20 members) or by the signatures of at least twenty deputies. (Before ten deputies was enough.) Questions may be put to the Prime minister or the ministers to be answered in the name of the Council of Ministers for oral or written answers in order to get information. Parliamentary inquiries are investigations conducted on a specific subject for obtaining information. Parliamentary investigations are inquiries concerning the Prime Minister or the ministers in order to decide to refer the matter to the High Court of justice.

At least formally under the Constitution of 1982 the executive has two heads and two of them are real power wielders. At first look, we have the impression that the drafters of the new Constitution believes in the formula of a two headed executive power. Only one of them, the Council of Ministers is responsible to the Grand National Assembly. This is an arrangement difficult to reconcile with the logic of parliamentary system.

AN ASSESMENT —

We can deduce that the position of the President has been regulated in the new Constitution with a great deal of inspiration from the 1958 French Constitution from the point of view of his relations with the Assembly, with high judicial organs, and with the Council of Ministers.

Can we call the political regime established by the 1982 Constitution as semi-presidential? According to Professor Maurice Duverger, a political regime can be considered as semi-presidential if the constitution combines the following three elements: (1) the president of the republic is elected by universal suffrage; (2) he possesses significant powers; (3) a prime minister and ministers can stay in office so long as they have the confidence of the parliament (24). As stated by the 1982 Constitution the President has important powers and the prime minister and the ministers can stay in office only if parliament does not show its opposition to them. But the President of the Republic is not elected by universal suffrage (President is elected by the Grand National Assembly). Because of the absence of the last condition, we cannot call the regime established in Turkey as semi-presidential.

But we know that the President has much more powers now. May he be all powerful or a mere figurehead or share his power with parliament will depend largely on the situation of the parliamentary majorities. If there is not a parliamentary majority then the President will be in a intermediary position, neither figurehead nor all powerful. In this situation there will be a great coincidence between the Constitution and practice. If there is a coherent and stable majorities then the President's position will depend on his relation

(24) Maurice Duverger, A New Political System Model: Semi Presidential Government, *European Journal of Political Research* 8 (1980), Vol:8; No : 2, p. 166.

with the parliamentary majority. If he is the leader of the majority then he will be all powerful but if he is a member of the majority, then he will become a figurehead (25).

The new Constitution, like the 1961 Constitution, tries to ensure the political neutrality and impartiality of the President of the Republic. The President-elect must resign from his political party, and his membership in the Grand National Assembly terminates upon his election (Article 101). So it is very difficult, if it is not impossible, for the President to be the leader of the majority in the Assembly. So if the President is not the leader of the majority in the Assembly then he will play largely a ceremonial role in the political system. But if there is no coherent and stable majority in the parliament or in emergency situations we may expect neither a figurehead nor all powerful President; but presidency in accordance to the Constitution. In this last situation he may use his powers extensively because he has to take the proper steps to end the deadlock.

In the beginning of the article we hypothesized that the well balanced constitution must prevent the efficient and stable operation of the political process from leading to insoluble constitutional deadlocks. In these situations the new Constitution relies heavily on the President. We also said in the beginning that the Constitution must provide the constitutional solutions to deadlocks between the executive and legislative organs of the state. Again the Constitution depends heavily on the President's powers to the solution of the deadlock of the executive and legislative organs.

The Constitution of 1982 is notable for the **hindsight** it manifests in providing a solution for every trouble that has menaced the Turkish state in the near past. After the adaption of the Constitution we know that we possess the necessary means and what we can do if we ever face the **same** problems again. However, if we **never** have the same problems again then the whole text is bound to be obviated. The new Constitution has a little bit overlooked the ways of governing a properly functioning political system.

(25) *Ibid.*, 182 - 187.

Every legal document is prepared to regulate the contingencies of the future and every article of every law tries to **forsee** what may happen in the future. All the new Constitution can **forsee** in the future, are the ills that paralyzed the Turkish society prior to September 12. But we also need the guidelines for a normally and healthily functioning society. Just one example may suffice to illustrate our point: The 1982 Constitution regulates the election of the President of the Republic in detail. Because prior to September 12, that was a major problem in the politics of Turkey. But we know that the Presidential deadlock was significantly a result of the Parliament's composition at that time. Probably, the «Parties and Elections Law» will prevent an inefficient and cosmopolitan Parliament. After that the Constitutional provisions regulating the election of the President will be somewhat redundant.

If we want to maintain the constitution and establish a healthily functioning democracy then we have to accept what Aristotle said 2300 years ago: «It is essential that that part of the population which desires the maintenance of the constitution should be larger than that which does not» (26). For the above reason, the 1982 Constitution, like 1961 Constitution, entrusts the constitution to the citizens. The basic guarantee of the maintenance of constitutions depends always on the acceptance of it by the population. We may safely conclude that a successful revival of constitutionalism in Turkey will depend less on the constitutional «inventions» than on the dominant movements of thought and feeling.

(26) Aristotle, *The Politics*, translated by T.A. Sinclair, Harmondsworth, Penguin Books, 1962, p. 175 .