

TURKEY'S SEARCH  
FOR A NEW

**10** POLITICAL  
SYSTEM

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WHAT KIND OF  
PRESIDENTIAL  
SYSTEM?

VAHAP COŞKUN



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## PREFACE

The system debate is arguably the most pressing and consequential subject of Turkish politics. Turkey has been having a governmental system discussion for a period of time, and the next few years will appear to be in intense debate and search.

Turkish parliamentary system experience (1876-2017) often dealt with interruptions. As a result, it has not only failed to produce general satisfaction in politics and society but also has been unsuccessful in yielding economic stability. Similarly, the outcome of the last five years of the Presidential Government System (or the Presidential System with its widespread use) could not generate stability.

The parliamentary system has had a hostile place in public memory. Because it is usually associated with military coups, the weakness of civil politics, military and civil bureaucracy tutelage over elected bodies, fragile and inconsistent coalition governments. Usually, instead of dealing with the structural shortcomings of Turkish democracy, bashing the parliamentary system was a safe debate tool under the military tutelage years. The shortcut savior happened to be the presidential system. It was supposed to protect Turkish democracy from military tutelage, political instability or coalition governments. During the 1980s and 90s, strong political leaders, such as Demirel and Özal, voiced that the parliamentary system was malfunctioning, and that Turkey should move into the presidential system. However, despite such occasional political and academic disclosures, the system change did not become a serious part of the public agenda until 2014.

The most significant break in system change occurred in the Presidential elections in 2007. As the reactions to Abdullah Gül's Presidential candidacy turned into a severe political crisis over the April 27, 2007 memorandum and the decision of the Constitutional Court to block his candidacy; the AK Party has turned to change the presidential electoral system.

The constitutional amendment electing the President by the people instead of the parliament in a referendum also gave solid political capital to the President. This new election system gave the President legitimacy of representing at least 50% of the voters. Moreover, it empowered him to push the boundaries of the classical parliamentary system with the 1982 constitution and symbolic role of the President.

Erdoğan as the first president elected directly by the people, has adopted a persistent policy of switching to the presidential system. For years, the presidents elected through parliament experienced a severe political clash with the elected governments due to their constitutional powers. The new system empowered the President with two additional power dynamics: being elected by the people (Erdoğan received 52 percent) and having a ruling party in the parliament. Ironically it was not only a new power surge but also paved the roads to new clashes and rifts between elected bodies.

Between 2014-2017, the anomaly caused many political crises. After the July 15 coup attempt, the deadlock was attempted to be resolved in line with the presidential system through the initiative and support of MHP leader State Bahçeli with the motto "*de facto situation should be de jure.*" Without much public debate, the constitutional amendment, drafted in line with the preferences of the AK Party and MHP, was adopted with 51 percent support on April 17, 2017, referendum while the July 15 coup trauma was still in effect.

The presidential system, which took effect in the June 24, 2018 elections, has also produced a high dissatisfaction over its political and administrative performance since 2018. It has been criticized for the unification of powers, weakening the checks-and-balances mechanisms, eroding the political party identities, pushing them to establish alliances, and deepening polarization. In addition, the ruling bloc, which favors the presidential system, has avoided revisions that will make the current system more operational, and further deepened the system's discomfort.

Public opinion studies show that support for the presidential system has fallen to 35 percent, and a possible referendum on the return to the parliamentary system will gather powerful support. Opposition political parties had a window of political opportunity created by dissatisfaction with the system. It helped opposition parties to develop a political strategy and rhetoric through the return to the parliamentary system. It allows many political parties with different political priorities to act together on the same goal while camouflaging the motivation to defeat Erdoğan in elections. They are currently asking to return to the parliamentary governmental system creating a political rhetoric on the axis of authoritarianism-democracy. In this framework, the system debate and the goal of restarting the parliamentary system have become the essential issue of the political struggle between the ruling and the opposition blocs.

Starting from 2021, the opposition political parties have prepared and publicly disclosed their parliamentary system proposals. This year they formed a joint working group and agreed on the basic principles, and finally presented the public "Strengthened Parliamentary System" proposal. Now six opposition parties decided to gather at the leadership level monthly—their main agenda focusing on governmental system change. It is a game-changing step in a fractured and highly polarized Turkish political atmosphere. Will the goal of returning to the parliamentary system be good enough to keep opposition parties united in the face of the ruling alliance, is questionable. However, it would be fair to argue that the parliamentary system proposal may ripen into the political alliance of opposition.

The search and discussion of the governmental system appear to be the most critical topic of politics for the next few years. Regardless of the outcome of the June 2023 elections, the system debate will be the most crucial topic of politics in the short term. If the current ruling alliance wins, they need to reform the system. If the opposition wins, they need to keep their election promise to change the system. In any scenario, Turkey is heading towards either imposing alterations or structural reform. Therefore, the system debate will settle itself as one of the top political issues in Turkey in the coming years.

Meeting this demand and preparing enhanced research on the governmental system will play an essential role in the quest for a possible change. Comprehensive research should present a comparative, global, political, and constitutional base for the debates and assist decision makers in political parties and the public in finding an enriched discussion floor.

Within the framework of this program, Ankara Institute plan to publish ten academic analyzes that will contribute to the search for systems in order to meet this end.

What Kind of a Presidential System by Vahap Coşkun is the last report of the 10 academic paper series.

We believe that this research project, which will continue through analysis, workshops, and public surveys, will contribute significantly to the quest for a system that progresses only through the harsh contrasts of government versus opposition parties dynamics and provides qualified academic background, common sense consultancy, and poll data.

## INTRODUCTION

Systems of government are one of the most intensively studied areas in law and politics. There is a fundamental and simple reason for this: There is a constant search for the best system for political stability, economic growth and the preservation of democratic values. Because of this quest, systems of government are the subject of serious debate, not only in countries where the political structure has collapsed or is uncertain, but even in established democracies. Almost everywhere, when faced with an economic or political dilemma, systems of government are compared with one another and demands for change are raised from certain sections of society.

We might say that this enduring interest in systems of government gained further momentum with the end of the Cold War. This is because with the collapse of the Soviet Union, many countries entered a process of democratization. The question of which system would or should be preferred in eastern and southern European countries for the establishment, implementation and development of democracy has been one of the most preoccupying questions in political and legal circles since then.

Turkey has also been part of these debates. Since the day it was put into practice, both the 1982 Constitution as a whole, and the system of government it introduced have been severely criticized. The character of this constitution, which reflects the will of a junta, has been emphasized as being oppressive, anti-democratic and tutelary; many individuals and institutions have therefore recommended alternatives to this anti-liberal constitution.

The majority of the proposals from the political realm, academia and civil society have been based on the parliamentary system. This was not surprising; because the Ottoman-Republican modernization was based on parliamentarism, the vast majority of Turkey's political elites identified democracy with this system. According to the elites, who had absolute prejudice towards the presidential system, Turkey could only get out of the constitutional impasse it was in with a classical parliamentary system of government.

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Nevertheless, there were also political and academic actors, albeit few in number, who believed that Turkey's salvation lay in a radical system change. In particular, leaders from the centre-right wing of the political spectrum have always shown a close interest in the presidential system. Turgut Özal, Süleyman Demirel and Recep Tayyip Erdoğan, all three of whom served as both president and prime minister, have been in favour of the presidential system, sometimes loudly and sometimes less so.

Yet, until recently, this system did not find many supporters among political parties. We might remember that after the 2011 general elections, a Constitutional Reconciliation Commission was formed in the Parliament to draft a new constitution. Three of the four parties (the Republican People's Party or CHP, the Nationalist Movement Party or MHP, and the Peace and Democracy Party or BDP), which had equal numbers of members in the Commission, advocated a parliamentary system, while only the AK Party proposed a presidential system.

However, some critical events that took place after 2007 (the 367 decision, the systemic tension between President Erdoğan and Prime Minister Ahmet Davutoğlu in the AK Party, the July 15, 2016 military coup attempt, and so on) caused history to flow in favour of the supporters of the presidential system. With the MHP, which had previously been staunchly opposed to the system, positioning itself on the side of the AK Party, the balance completely shifted and with the constitutional amendment in 2017, Turkey switched from parliamentarism to the Presidential System of Government, a derivative of presidentialism.

This constitutional change, which shook the existing structure to its foundations, placed the preferences regarding the system of government at the centre of politics. As a result, debates on the presidential system and the Turkish-type presidential model have flared, and politics has been divided into supporters and opponents of the presidential system.

In this study, which aims to contribute to these increasingly heated debates, firstly, the general characteristics of the presidential system and its outlook in the world are evaluated, and then the Presidential Government System in Turkey and the problems created by this system are discussed. In the last part of the study, some suggestions are made towards the solution of these problems.

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## I. SYSTEMS OF GOVERNMENT AND DEMOCRACY

According to law, a state has three powers: legislative, executive and judicial. Systems of government emerge in relation to these three powers, and describe how and by which organs these three powers are exercised in a state. In this framework, the concept of system of government refers to how the three basic legal functions of the state are allocated among its organs, and the nature of the relationship between these organs.<sup>1</sup>

Since the judiciary is, in principle, recognized as an independent power in all democratic countries, systems of government are essentially classified according to the relationship between the legislature and the executive. The legislature and the executive are either united in one entity, or distributed to different entities. If these two powers are united in a single entity, there is a “unity of powers”, and if they are given to independent entities, there is a “separation of powers”.

In the unity of powers, systems of government differ depending on the body in which the powers are united. When the legislature and the executive are united in the executive, we speak of “absolute monarchies” or “dictatorships”, and when they are united in the legislature, we speak of “parliamentary systems of government”.

In terms of the separation of powers, government systems are classified according to the degree of separation of the powers from each other. A hard and rigid separation of legislative and executive powers leads to “presidential systems”, while a soft and balanced separation of these two powers leads to “parliamentary systems”.

In addition to presidentialism and parliamentarism, there is also a system of government called “semi-presidentialism”. Semi-presidentialism is a mixed or hybrid model that resembles presidentialism in some features (such as a popularly elected

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<sup>1</sup> **Mustafa Erdoğan**, *Anayasa Hukukuna Giriş [Introduction to Constitutional Law]*, Orion Publications, Ankara, 2017, p. 207.

head of state) and parliamentarism in other features (such as the sharing of executive power between the head of state, and the prime minister and his cabinet). Gözler defines semi-presidentialism as “a parliamentary system in which the president is elected by the people” and states that this system should actually be called the “semi-parliamentary system”.<sup>2</sup>

Under the separation of powers, presidentialism, semi-presidentialism and parliamentarism are all compatible with democracy. However, there has long been a vigorous debate in the literature on which of these systems creates a more favourable environment for the preservation and development of democracy. The relationship between systems of government and democracy has been one of the most important topics for constitutional lawyers and political scientists.

In comparative studies of systems of government, conclusions can be drawn in favour of and against each system. Some studies may point to presidentialism and some to parliamentarism for a strong democracy. However, when a general evaluation is made, it can be said that the system of government is not the only determinant of whether democracy functions properly or not.<sup>3</sup>

In fact, systems of government are not directly related to democracy. Democracy, in essence, is about government being based on the consent of the people, and accountable to the people. Systems of government, on the other hand, are concerned with the way power is organized. As long as the basic political decisions are made by the people and their representatives, the different distribution of governmental powers among individuals and organs does not pose a problem for democracy. In other words, democracy can be compatible with different systems of government. Likewise, different systems of government can coexist with democracy.<sup>4</sup>

When it comes to preserving the existence of democracy, it is important to note that this is linked to many factors. The economic, political, historical and cultural characteristics of a country, as well as its constitutional rules, political party structures and electoral systems, have more of an influence on the construction and sustainability of democracy than does its system of government. Democracy cannot be linked to the system of government alone; it cannot be said that a particular system of government will make democracy more robust than the other.

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2 **Kemal Gözler**, *Anayasa Hukukunun Genel Esasları* [General Principles of Constitutional Law], Ekin Basın Yayın Dağıtım, Bursa, 2022, p. 241.

3 For some studies examining the relationship between government systems and the chances of democracies to survive and the possibility of democracies to collapse, see: **Serap Yazıcı**, *Başkanlık ve Yarı Başkanlık Sistemleri* [Presidential and Semi-Presidential Systems], İstanbul Bilgi University Publications, İstanbul, 2002, pp. 3-18.

4 **Mustafa Erdoğan**, *Özgürlük Perspektifinden Hukuk ve Demokrasi* [Law and Democracy from the Perspective of Freedom], Kesit Publications, İstanbul, 2013, p. 298.

In short, systems of government should not be fetishized, and the future of democracy in a country should not depend on the presence or absence of a particular system of government. As in Turkey, one must avoid identifying democracy with a system of government, such as parliamentarism. Blanket judgments to the effect that one system will make democracy function with all its institutions and rules, whereas another system will undermine democracy, must be avoided. We must rather focus on the legal, political and sociological structures of a given country, and keep in mind the potential of these structures to support or hinder democracy while discussing the chances of democracy. This is because the positive or negative impact of a system of government on a democratic regime is not free from the influence of these structures.

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## II. PRESIDENTIAL SYSTEM

The lines of development of presidentialism and parliamentarism, considered within the theory of separation of powers, differ from each other. Parliamentarism is a system formed in the light of historical experiences, whereas the presidency is a “created” system. Parliamentarism has matured through experiences in practical life, whereas presidentialism is a model produced by the theoretical mind.

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The ideal version of the presidential system was realized in the United States. The main aim of the founding fathers of the USA in creating the new system was to establish an order distinguished from the traditional monarchical system of colonial Europe. Indeed, their war of independence against Britain had led to a deep distrust of both the legislature and the executive. Thomas Jefferson’s quote “*That government is best which governs least*” reflected the fundamental philosophy of the founding fathers of the new country.<sup>5</sup>

In the presidential system created by the 1787 US Constitution, legislative power is vested in the Congress, which comprises the Senate and the House of Representatives. The Senate is composed of 100 senators elected for a six-year term. It is chaired by the vice-president and includes two senators from each state, regardless of population and size. The House of Representatives is composed of 435 representatives, elected for a two-year term, with each state contributing members in proportion to its population.

Judicial jurisdiction is vested in a Supreme Court, and lower courts which Congress may regulate to be established as needed.

Executive power is vested in the president: The president and vice-president are elected for a four-year term. Before 1947, there was no provision in the US Constitution concerning the number of times the president could be elected. In 1947 a constitutional amendment was passed, effective from 1951, stipulating that the president could be elected for a maximum of two terms.<sup>6</sup>

<sup>5</sup> **Erdoğan Teziç**, *Anayasa Hukuku [Constitutional Law]*, Beta Publications, İstanbul, 2007, p. 432.

<sup>6</sup> **Mehmet Turhan**, *Hükümet Sistemleri [Government Systems]*, Turhan Publications, Ankara, 1993, pp. 33-34.

The drafters of the American Constitution thus sought to prevent the central concentration of all state powers within one hand, using the dual means of separation of powers, where the legislature and the executive would check and balance each other, on the one side, and federalism, which decentralizes power from the centre to the periphery, on the other. The aim was to avoid the dangers of a strong and centralized state.<sup>7</sup>

Since the presidential system was first practiced in the United States, the basic principles and institutions of the system were also developed in that country. Sartori states that the presidential system has three defining criteria: First, the head of state is elected directly or indirectly by the people for a certain period of time (which may be four to eight years). Second, the executive is neither appointed nor impeached by the legislature. The third is that no “dual authority” is allowed between the president and members of the cabinet; the executive branch is directed by the president.

*“A political system is presidential, then, if and only if the head of state (i) is elected by popular vote, (ii) cannot be removed from office by parliamentary vote within a predetermined term of office, and (iii) presides over or otherwise directs the governments he appoints. When all these three conditions are met, we have a pure presidential system, or so I define it.”<sup>8</sup>*

In a presidential system based on a strict separation of powers, the legislature and the executive are both functionally and organically separated from each other. According to the functional separation, the legislature (Congress) makes the laws, the executive (president) administers the country by implementing the laws, and the judiciary resolves legal disputes through judicial procedures. As a rule, each power performs only its own function and does not interfere in the sphere of the other powers.

Organic separation refers to the independence and separateness of the legislature, the executive and the judiciary, and the different timing and terms of office of the legislature and the executive. Both the president and the Congress are elected by the people; neither can the president dissolve Congress, nor can Congress dismiss the president. In a presidential regime, it is not possible for the legislature to remove the president from office except through *impeachment*.

A requirement of organic separation is that the same person cannot serve in both the legislature and the executive. Therefore, cabinet members cannot be parliamentarians and parliamentarians cannot serve in the president’s cabinet.

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<sup>7</sup> Erdoğan, Anayasa Hukukuna Giriş [Introduction to Constitutional Law], p. 209.

<sup>8</sup> Giovanni Sartori, Comparative Constitutional Engineering, trans: Ergun Özbudun, Yetkin Yayınları, Ankara, 1997, p. 115.

Although the powers are organically and functionally separated from each other in the United States, a “*system of checks and balances*” was also introduced to prevent excessive use of the powers granted to each organ. The political philosophy underlying the system of checks and balances is expressed by Madison in *The Federalist*. According to Madison, since power is an encouraging phenomenon, it is only possible to keep the different organs of the state within constitutional limits by placing checks and balances in the hands of rival organs.<sup>9</sup>

In order to prevent those who hold state power from slipping into authoritarianism and to ensure the effective functioning of the state, many checks and balances are envisaged in the presidential system. For example, the executive branch, i.e., the president, has the following powers:

- He can propose laws through messages to Congress.
- He can veto legislation passed by Congress.
- He can call for an extraordinary meeting of Congress.
- He can issue decrees, by-laws and regulations with the force of law.
- He appoints federal judges.
- He can pardon crimes against the United States.

In turn, the legislature has the following powers:

- It establishes or abolishes ministries for the executive branch.
- It can impeach and try members of the executive branch.
- The president’s budget is subject to Congressional approval; Congress can cut or disapprove it.
- The president’s veto may be overridden by a two-thirds majority of both houses separately.
- Presidential appointments and international treaties shall be approved by the Senate.
- Congress funds the judicial branch and can establish or abolish lower federal courts.
- It can accuse and prosecute members of the judicial branch.
- It determines the Supreme Court’s appellate jurisdiction.

Checks and balances aim to ensure that the will of the people is more effective in governance through a system based on consensus among the powers, rather than placing decisions on fundamental issues in the hands of a single power. Strengthening the democratic character of the presidential system, which envisages a strict separation of powers, can only be possible if the three powers of the state check and balance each other through various means. In this respect, checks and balances are vital for the preservation of democracy in a presidential system.<sup>10</sup>

Like other systems of government, the presidential system, which relies on a rigid separation of powers and a system of checks and balances to temper this rigidity and make the state function, has its strengths and weaknesses. The strengths of the system can be categorized under several headings:

- The president is in office for a fixed term, and cannot be removed for any reason other than criminal liability. Because of this feature, the system does not allow for government crises; on the contrary, the certainty of tenure makes the government strong and stable.
- The popular election of the legislature and the executive reinforces the democratic legitimacy of the system. Since both powers are based on the popular vote, the centre is strengthened; the shift towards the centre by parties that feel obliged to appeal to every group minimizes ideological drifts to the extremes.
- Checks and balances prevent arbitrariness in both the legislature and the executive.

When it comes to the weaknesses of the system, a few points can be highlighted:

- The inability to remove the president before the end of his term may lead to instability rather than stability. The fixed duration of the executive makes it impossible to replace a president even if he or she has lost popular support. Keeping a president who has failed and faced widespread backlash may increase social tensions.
- While the popular election of both the executive and the legislature reinforces democratic legitimacy, it may also lead to debates on double legitimacy. Particularly in cases where the president and the majority in the legislature are from different parties, the system may reach an impasse.
- In a presidential system, the winner wins everything and the loser loses everything. The all-or-nothing character of the system may exacerbate the political competition.

<sup>10</sup> **Şule Özsoy Boyunsuz**, Yeni Anayasada Önerilen Türk Tipi Başkanlık Sisteminin Karşılaştırmalı Bir Analizi [A Comparative Analysis of the Turkish Type Presidential System Proposed in the New Constitution], <https://hukukdefterleri.com/yeni-anayasada-onerilen-turk-tipi-baskanlik-sisteminin-karsilastirmali-bir-analizi/>

- Since the goal is to find the most suitable candidate for the presidency, in this system voters make their choices based on individuals rather than parties. Especially in places where traditional parties are not strong or have dissolved, a name that is not identified with a party and has no political experience but becomes popular on any occasion can seize power.
- Giving the executive power to a single person who is elected for a certain period of time and cannot be impeached may lead to the personalization of power.<sup>11</sup>

Of course, as in every system, there are bottlenecks in the presidential system. Even in the US, where it was created, there are periods when the system malfunctions. Nevertheless, we might ask, what has made the presidential system work in the US since its inception? Four points can be made in response to this question.

First, the US has a strong democratic tradition. The country has a strong historical experience which tends to the idea that both the legislature and the executive must be limited. Power is therefore shared both horizontally and vertically. The existence of an effective and widespread civil society and media organization which are sensitive to rights ensures that the powers that be are subject to strong democratic scrutiny.

The second point is the party structure in the United States. Political life is dominated by two parties. There are no major ideological differences between the Republicans and the Democrats; changes in power do not create radical changes in the daily lives of individuals. Since there is no “party discipline”, representatives sometimes make choices against the wishes of their constituents and against the wishes of their own party. Loose political party ties make it easier for the presidential system to work, since this loose party structure both strengthens the representatives vis-à-vis their parties and prevents the legislature from acting as a unified bloc against the president, as it allows for political transitions.

The third is federalism. Under the US Constitution, each of the 50 states has its own constitution, elected governor, court system and legislature. During election cycles, American voters elect not only the president and members of Congress, but also their state/local governments. Separation of powers is applied both horizontally (legislative, executive and judicial powers are vested in different bodies) and vertically (the state is organized according to the principle of decentralization).<sup>12</sup>

In the US federal structure, many public services are provided by the federal states, or local governments. The distribution of political power between the central state

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<sup>11</sup> For a general evaluation of the problems of the presidential system, see: **Yazıcı**, Başkanlık ve Yarı-Başkanlık Sistemleri [Presidential and Semi-Presidential Systems], pp. 39-90.

<sup>12</sup> **Erdoğan**, Özgürlük Perspektifinden Hukuk ve Demokrasi [Law and Democracy from the Perspective of Freedom], p. 299.



organization and the federal states both limits the president's authority, and reduces the negative impact of deadlocks at the federal level. Federalism is one of the most important factors protecting democracy in the US and preventing the system from turning into authoritarianism or dictatorship.<sup>13</sup>

Fourth is the key position of the Supreme Court in the system. The Supreme Court is the highest court in the United States, the only court provided for by the Constitution, its decisions are final and cannot be appealed to any other court. Its most important job is to determine the constitutionality of legislative and executive actions. Since 1803 in *Marbury v. Madison*, the Court has exercised constitutional jurisdiction. Its decisions are of vital importance for US democracy, so much so that it would not be wrong to say that "*If the American Constitution of 1787 is alive today, it is thanks to the efforts of the Supreme Court*".<sup>14</sup>

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13 **Erdal Fırat**, Türkiye'de ve Dünya'da Hükümet Sistemleri, Başkanlık Sistemi Türkiye'de Uygulanabilir mi?, [Government Systems in Turkey and the World, Can the Presidential System Be Implemented in Turkey?], Journal of Academic Social Research, Year: 6, Issue: 35, March 2019, p. 15.

14 **Turhan**, Hükümet Sistemleri [Government Systems], p. 39.

Özbudun points out that there is a close relationship between the choice of a system of government and geographical location.

### III. PRESIDENTIAL SYSTEMS AROUND THE WORLD

The presidential system, which was first implemented in the United States, quickly spread across a wide territory. Soon after George Washington was elected as the first president of the United States in 1789, almost all Latin American countries adopted the presidential system: Haiti in 1807, Paraguay in 1813, Argentina in 1816, Chile in 1817, Colombia in 1819, Costa Rica and Peru in 1821, Mexico in 1824, Bolivia in 1825, Venezuela, Ecuador and Uruguay in 1830, Nicaragua in 1835, Guatemala in 1839, Honduras and El Salvador in 1841 and the Dominican Republic in 1844.<sup>15</sup>

Özbudun points out that there is a close relationship between the choice of a system of government and geographical location. The historical traditions and political culture of the region, rather than logical reasons, determine which system a country prefers. The reason why Latin American countries are inspired by the US presidential system is their attachment to their historical traditions. The only Latin American country where parliamentarism was considered as an alternative to the presidential system during the constitution-making process was Brazil, but this effort was not successful there.<sup>16</sup>

*“The problem that Latin American countries faced when they gained their independence was the same problem that the United States faced: To create a government in which the king would not be in charge. At that time, the parliamentary system had not yet crystallized, and was beginning to emerge in countries which were governed by monarchies at the time. In these countries, parliamentary constitutions were the result of negotiations between the king and the aristocrats. In Latin American countries, the first governments derived from monarchies. Therefore, at the beginning of the 19<sup>th</sup> century, when constitu-*

15 **Halit Tunçkaşık**, Başkanlık Sistemi: Teori, Pratik ve Tartışmalar [Presidential System: Theory, Practice and Debates] (Available in: Comparative Government Systems: Presidential System) TBMM Research Services Presidency Publication, Ankara, 2017, p. 9.

16 **Ergun Özbudun**, Demokrasiye Geçiş Sürecinde Anayasa Yapımı [Constitution-Making in the Transition to Democracy], Bilgi Publications, Ankara, 1993, p. 144.

*tions were being drafted in these countries, the options were not “parliamentary” versus “presidential”. The choices were between “monarchy” or “republic”. At that time, the USA represented the most successful republican regime, and seemed to have emerged from the same circumstances. Therefore, the adoption of the presidential system was a natural outcome for these countries.”<sup>17</sup>*

Since the European continent has a tradition of parliamentary systems, an American-style presidential system was not adopted in southern and eastern Europe during the transition to democracy after the end of the Cold War. The choice in Europe was between a classical parliamentary system and a semi-presidential system. Nonetheless, although not the same as the classical US presidential system, a tendency towards presidentialism emerged in eastern Europe, with a strong preference for a popularly elected president.

Indeed, in Poland, Bulgaria, Romania, Lithuania, Croatia, Serbia, Georgia, Ukraine, Moldova and especially Russia, the president is generally the central element of the political system, albeit with some differences. Although these countries are called semi-presidential, they have empowered their presidents with different powers than France, the prototype of semi-presidentialism.

*“In these countries, the president can appoint and dismiss the prime minister. The president has veto power that is difficult to overcome by parliament. The president has the power to issue decrees with the force of law. These crucial powers have brought these so-called ‘semi-presidential’ governments closer to the presidential system and made the president the central figure in politics.”<sup>18</sup>*

Taking into account the differences among them, it is possible to say that the presidential system is currently practiced in the United States, Latin America, the countries that left the former Soviet Union, and parts of Asia and Africa.<sup>19</sup>

<sup>17</sup> **Tunçkaşık**, Başkanlık Sistemi [Presidential System], pp. 10-11.

<sup>18</sup> *Ibid.*, p. 12.

<sup>19</sup> For a list of countries that have implemented and are implementing presidential systems since the Second World War (1946), see: **Tunçkaşık**, pp. 13-14.

Due to the Constitution's structure which positions the president as a tutelary authority over the government, the leaders of the centre-right political tradition have always persisted in their demands for the change of this system of government.

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#### IV. TURKEY AND THE PRESIDENTIAL SYSTEM

The presidential system is not an issue that Turkey is unfamiliar with, or has only recently begun to discuss. The 1982 Constitution, the product of the September 12 military coup, has always been criticized, especially by centre-right political actors. Due to the Constitution's structure which positions the president as a tutelary authority over the government, the leaders of the centre-right political tradition have always persisted in their demands for the change of this system of government.

The presidential system, as opposed to the parliamentary system, had an important place in the agenda of these leaders. Turgut Özal in the 1980s, Süleyman Demirel in the 1990s and Recep Tayyip Erdoğan in the early 2000s put presidential system proposals on the agenda. However, since these proposals did not receive enough support from the political and academic public, they did not turn into a legal process or a constitutional amendment proposal.

The year 2007 marked a turning point in the change of the system of government in Turkey. This was because the Constitutional Court exceeded its constitutional powers and blocked Abdullah Gül's election as president, which led to a new political crisis. In order to resolve this crisis, the AK Party decided to amend the constitution, taking the right to elect the president away from the Parliament and giving it to the people. Election by the people further strengthened the position of the president, who was already constitutionally endowed with strong powers.

In 2014, Recep Tayyip Erdoğan became the first president elected by the people. Pushing the constitutional boundaries with the democratic power of the popular vote, Erdoğan also came into conflict with the AK Party government he founded. The growing tension between the president and the government first led to a change in the AK Party. Prime Minister Ahmet Davutoğlu, who could not get along with Erdoğan, resigned. With Binali Yıldırım taking over as prime minister, Erdoğan began a *de facto* presidency.

In 2016, the MHP made an appeal to the AK Party to legalize this *de facto* situation, stating that they were ready to support a change in the system of government if the AK Party insisted on the presidency. The AK Party responded positively to this call, and the constitutional amendment drafted jointly by the two parties was adopted first in Parliament, and then in the referendum held on April 16, 2017. The constitutional amendment was adopted with 51.18 percent of the vote, and accordingly:

- Presidential and parliamentary elections would be held every five years on the same day.
- In the event that the president or the Parliament decides to renew the elections, both elections would be held at the same time.
- The obligation for the president to disassociate himself from his party was abolished.
- The president was authorized to appoint senior public officials.
- The president was authorized to issue decrees.
- The president was authorized to make administrative regulations on institutions and related administrative arrangements by presidential decree.
- A provision was introduced to hold the president accountable for his actions and transactions.
- The government’s authority to propose laws was abolished, and members of parliament were authorized to propose laws.
- The president was authorized to prepare and present the annual budget.
- Martial law was abolished, issues related to the state of emergency were reorganized and the president was granted the sole power to declare a state of emergency.

With these regulations that completely changed the government system, Turkey switched to a system called the “Presidential Government System” or the “Turkish-type presidential system”. The system was harshly criticized from the very first moment it came into force. The most prominent criticisms can be summarized as follows.

1. Article 104 of the Constitution authorizes the president to issue “decrees” on issues that are not explicitly regulated by law, with the exception of personal rights and political rights – including social rights. This power, which does not require any criteria such as urgency or crisis and does not foresee any parliamentary oversight, concentrates the power of the president on two sides: On the one hand, the president is able to implement his political programme without the consent of Parliament. On the other hand, he can enter the legislative field by claiming that there are no clear provisions in the law on an issue he wants to regulate. Thus, he can bypass

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the Parliament and rule the country entirely by decree. Turkey's last five years have confirmed that this concern is well-founded.

2. According to Article 119 of the Constitution, the president alone can declare a state of emergency and issue presidential decrees during periods of emergency without any subject limitation. With the power to initiate a state of emergency without parliamentary approval and to issue decrees specific to this regime, the president can effectively bypass the Parliament. Presidential decrees during these periods are subject to parliamentary scrutiny and must be discussed within three months. The time limit for emergency decrees is positive in terms of ensuring this legality. However, these decrees, which are supposed to be issued only on the issues necessitated by the state of emergency and to constitute temporary regulations, can also be used to make permanent regulations on all issues; in other words, the state of emergency can be made permanent.

3. Article 104 of the Constitution empowers the president to appoint and dismiss vice-presidents, ministers and senior public officials. The president exercises this power alone, and the Parliament is not involved at any stage. The procedures and principles for the appointment of senior public administrators are also regulated by decree, not by law.

Article 106 of the Constitution stipulates that the establishment, abolition, duties and powers, organizational structure and central and provincial organizations of ministries shall be regulated by presidential decree. This arrangement gives each incoming president enormous power to organize the institutional structure as he wishes, to open and close the institutions he wants, and to determine the areas of duty and authority as he sees fit. The fact that the administrative order is governed by decrees rather than laws means that in practice there are no rules limiting the president. This provision, which would clearly damage the rule of law, would also make institutionalization difficult, replace merit with loyalty and weaken the public administration as a whole.

4. Article 106 of the Constitution states that once elected, the president can appoint one or more vice-presidents. This is an open-ended power; each president determines the number of vice-presidents. It is a major handicap for democracy that an office that has the powers and immunity rights of the president, that deputizes the president and can serve as president for up to one year when the presidency is vacant, is filled by appointment rather than election, and lacks democratic legitimacy.

5. Article 116 of the Constitution authorizes the president to dissolve Parliament under the name of "renewal of elections". This power is not subject to any time limit or condition; the president can exercise this power at any time. The Parliament

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may also seek the renewal of elections; however, one point should be noted here: While the president can decide to renew the elections on his own, the Parliament can only do so with a three-fifths majority of its total number of members. While the president can easily make this decision, the Parliament is bound to a quorum that is difficult to reach.

In sum, the power of dissolution is actually a power granted to the president, adding further strength to his power. With this power, the president can call early elections at any time he sees fit, and can terminate the existence of the Parliament before it makes a decision to oversee him; in other words, he can single-handedly change the entire political balance.

Article 77 of the Constitution stipulates that parliamentary and presidential elections shall be held on the same day every five years. There are two possibilities if the elections are held on the same day: The first, as is currently the case, is that the parliamentary majority and the president belong to the same party. In this case, the president, who alone holds the executive power, would control the Parliament; power would be concentrated in the executive, which would increase the danger of authoritarianism in the country.

The second is when the parliamentary majority and the president come from different parties. In this case, two centres of power – both with democratic legitimacy – come into conflict. If there is no compromise between these two powers, the system will inevitably come to a standstill. In other words, this choice, which was made with the aim of achieving complete harmony between the legislature and the executive and creating a stable administration, may on the contrary bring the legislature and the executive into conflict.

7. The constitutional amendment adopted on April 16, 2017 removed from Article 101 of the Constitution the phrase *“The person elected president shall be disassociated from his party, if any”*, paving the way for the president to become a member and chairman of a political party. In fact, this was the main purpose of the 2017 amendments: The president, as the head of a political party, was to control his group in the Parliament and to dominate the Parliament. As a matter of fact, since the introduction of this system, the president has not only managed the executive branch on his own but, as the chairman of his party, he has also manipulated the Parliament in the direction he wishes, pushing it into a highly ineffective position.

8. The president directly and indirectly appoints 12 members of the Constitutional Court, which consists of 15 members according to Article 146 of the Constitution, and six members of the Council of Judges and Prosecutors (HCJP), which consists of 13 members according to Article 159 of the Constitution. As in the current situation,

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when the party of which the president is the head has a majority in the Parliament, the president directly and indirectly appoints the HCJP, which makes appointments to the entire high judiciary and lower courts, and oversees disciplinary and personnel affairs.

This state of affairs shows that the judiciary, which should be independent, has come under the tutelage of the executive. The judiciary, which is supposed to oversee the executive, is almost entirely determined by the executive. In such a structure, the possibility of checking and balancing the executive is almost non-existent.

Furthermore, Article 130 of the Constitution gave the president the power to appoint all rectors, and Article 131 gave the president the power to appoint half of the members of the Council of Higher Education. These provisions, which express the placing of universities under the administrative and political tutelage of the executive, like the judiciary, are important in terms of showing the extent of the concentration of power in one hand.

9. Article 99 of the Constitution abolished censure when the Presidential Government System was introduced. This was natural, as in this system there is no cabinet or prime minister who remains in office with a vote of confidence, and is dismissed by a vote of no confidence. However, other means of legislative oversight of the executive were also neutralized under this system. For example, the questioning mechanism was weakened in Article 98 of the Constitution; members of parliament, vice presidents and ministers were only allowed to ask written questions, not oral questions.

The parliamentary investigation has also ceased to be an effective means of oversight. This is because Articles 105 and 106 of the Constitution set very high limits for a parliamentary investigation against the president, vice presidents and ministers. Namely, for an investigation to proceed, 301 deputies must first submit a motion and 360 deputies must vote in favour for an investigation to be opened. After the decision to open an investigation, the file is referred to a commission, which then prepares a report. After the report is discussed, the president, vice presidents and ministers can be referred to the Supreme Court only with 400 votes.

Except in exceptional cases, it is extremely difficult for the opposition to reach these numbers (301, 360, 400). Therefore, in this system, the president, his deputies and ministers cannot be subject to parliamentary oversight. In fact, the purpose of keeping the ratios so high is to render the tools that enable the executive to control the legislature as dysfunctional as possible.

10. Article 161 of the Constitution grants the president the power to draft the budget bill and the Parliament the power to adopt it. If the Parliament rejects the proposed budget law, the president shall implement the previous year's budget by increasing it according to the revaluation rate. In other words, the Parliament's rejection of the

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budget bill is meaningless; the Constitution has equipped the president with the power to override the Parliament's rejection. In practice, depriving the legislature of this power and freeing the executive from budgetary oversight is a violation of one of the most fundamental principles that make a regime a democracy.

With the 11<sup>th</sup> amendment of 2017, the president's previous power of "delaying veto" was transformed into a "strengthening veto". According to Article 89 of the Constitution, if the president does not approve a law passed by the Parliament and sends it back for reconsideration, the Parliament must reach an absolute majority of the total number of members (301 deputies) in order to send it back to the president. In a situation where the president's party has a majority in Parliament, it would be very difficult for the opposition to exceed this threshold.

Granting the president such a veto power over laws opens the door for him to interfere with the law-making power of the Parliament, to prevent laws from being made against his will, and to fill every legal gap with decrees. This would not only inflict serious harm on the rule of law, but also nurture authoritarian tendencies.

In a presidential system, there are three checks and balances on the executive: legislative oversight with effective checks and balances, independent and impartial judiciary oversight, and public opinion oversight with a free press and a strong civil society network. In Turkey, under the Presidential Government System, all three of these powers have been severely undermined. Parliament has been greatly weakened, the independence of the judiciary has been dealt a severe blow, and the media and civil society have been suppressed.

This system, which was put into effect with the claim of strengthening the separation of powers, has gone in the opposite direction, eliminating checks and balances and concentrating all powers in a single centre (the president). This system, which finds every tool that can limit political power unnecessary and eviscerates it, cannot be characterized as a presidential system. This system, which concentrates all powers in the president, can only be considered a "presidentialist" system.<sup>20</sup>

With the 11<sup>th</sup> amendment of 2017, the president's previous power of "delaying veto" was transformed into a "strengthening veto".

20 For evaluations on the Presidential Government System, see: **Vahap Coşkun**, 16 Nisan 2017 Tarihinde Kabul Edilen Anayasa Değişikliklerinin Değerlendirilmesi [Evaluation of the Constitutional Amendments Adopted on April 16, 2017], Dicle University Law Faculty Journal, Volume: 22, Issue: 36, Year: 2017, pp. 3-30; **Serap Yazıcı**, Cumhurbaşkanlığı Hükümet Sistemi: Yol Açtığı sorunlar ve Çözüm Önerileri [Presidential Government System: Its Problems and Recommendations Towards a Solution], (Published in: Türkiye Tipi Başkan Başkan Hükümet Sistemi Tartışmaları), Demokrasiyi Güçlendirme Derneği Yayınları, İstanbul, 2022, pp. 238-245; **Erdoğan**, Özgürlük Perspektifinden Hukuk ve Demokrasi [Law and Democracy from the Perspective of Freedom], pp. 304-308; **Boyunsuz**, Yeni Anayasada Önerilen Türk Tipi Başkanlık Sistemi [The Turkish Style Presidential System Suggested by the New Constitution], <https://hukukdefterleri.com/yeni-anayasada-onerilen-turk-tipi-baskanlik-sisteminin-karsilastirmali-bir-analizi/>

In the May 14, 2023 elections, the people will not only determine the government, but will also reveal which system of government they prefer.

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## V. RECOMMENDATIONS

With the constitutional amendment in 2017, Turkey discarded its parliamentary tradition of nearly a century and a half, and adopted the Presidential System of Government, which is inspired by the presidential system but differs sharply from it on fundamental points. However, the transition to the new system did not end the debate on systems of government in the country.

On the contrary, the new system's negative impact on law, politics and the economy deepened the debate. As complaints against the system found societal support, the opposition came together with the proposal of a Strengthened Parliamentary System against the Presidential Government System. Thus, politics in Turkey was divided into two poles, with the government advocating for the Presidential System of Government and the opposition advocating for a Strengthened Parliamentary System.

In the May 14, 2023 elections, the people will not only determine the government, but will also reveal which system of government they prefer. If the opposition wins the elections, Turkey will enter a transition period, depending of course on the parliamentary distribution of seats. If the government wins, the current system will most likely be preserved.

However, even if the Presidential System of Government is to be continued, it would be appropriate to make some changes to this system in view of the problems it has created in the short time it has been in place. The main constitutional measures to be taken in the Presidential System of Government in order to strengthen the principle of separation of powers and democratic mechanisms can be listed as follows:

1. The president may be authorized to issue decrees with the force of law to make the executive more effective. However, this power should be limited as it is open to abuse. In this respect, the president's power to issue decrees may be granted by an authorization law to be passed by the Parliament in ordinary periods, and in extraordinary periods, within the limits of subject matter and duration, and the rea-

sons for its issuance may be subject to constitutional conditions. Likewise, it may be stipulated that decrees issued in extraordinary periods must be debated and decided by the Parliament within a certain period of time after their issuance, for instance within 45 days or 60 days.

2. It is natural for the President to be empowered to appoint senior public officials to carry out his political programme. However, this power should not be unchecked. The president's appointments of high-level public officials (ministers, ambassadors, members of the supreme court, etc.) should be subject to parliamentary approval. The requirement for approval ensures that the president takes into account the will of the Parliament when nominating a candidate for an office. When the president chooses a candidate, he thus takes care to ensure that the candidate is approved by the Parliament.

3. The president should have a vice-president who should stand for election like the president. This is important in two ways. First, during the election campaign, the public gets to know the vice-president and knows who will occupy that seat after the election. Second, when the presidency becomes vacant for any reason, this means that an actor with democratic legitimacy will take over, ensuring continuity of governance.

4. The powers of the president and the Parliament to renew elections should be abolished. Neither should the president be able to dissolve the Parliament, nor should the Parliament be able to dismiss the president – except for criminal liability. In line with the basic principle of the presidential system, making the president and the Parliament independent of each other regarding their terms of office would provide the public with an insight into the elections and strengthen the stability of governance.

5. Under no circumstances should the President of the Republic serve more than two terms in office; he should not be allowed to serve more than two terms by creating exceptional circumstances.

6. Elections should be held every four years, not every five years. In a young, vibrant and dynamic country like Turkey, five years is a long time. Democratic legitimacy should be renewed every four years; this will make politics more responsive to the changing demands of the people and will also prevent undemocratic pursuits.

7. Presidential and parliamentary elections should not be held on the same day; the dates of the elections should be differentiated. A certain period of time between the legislative and executive elections would enable the people to exercise their democratic control more effectively.

8. Since political parties in Turkey are strictly disciplined, the fact that one person is both the president and the chairman at the same time results in the fusion of the legislative and executive branches. The president not only rules the executive alone, but also directs the Parliament in his capacity as president. The separation of powers becomes mere lip service and it becomes impossible for the powers to balance each other. To prevent this, the president should not be allowed to become the party leader.

9. A mixed model should be adopted for the composition of the higher judicial bodies, particularly the Constitutional Court, and the boards or committees that regulate the professional procedures and personal rights of members of the judiciary. For example, two thirds of the members of the Constitutional Court could be elected by the Parliament and one third by the president, observing a quorum that forces parties to compromise. Likewise, one third of the members of the HCJP could be appointed by the president, one third by the Parliament and one third by the Council of State and the Court of Cassation. In order to ensure the independence of the judiciary, the president should be excluded from being the sole appointer in the formation of high courts and high judicial boards.

10. Members of parliament should be given the right to ask ministers oral questions in addition to written questions. The thresholds for opening a parliamentary investigation should be reduced to a reasonable level, especially for ministers. A distinction should be made between the president's crimes of office and other crimes. Vice-presidents and ministers should cease to hold office if they are referred to the Supreme Court.

11. The power granted to the president to implement the previous year's budget by increasing it according to the revaluation rate should be abolished if the Parliament rejects the budget bill. In a democratic country, adopting a budget bill is one of the most important powers that a parliament can have; there should be no provision that would prejudice this power.

12. One of the most important tools to prevent presidential and presidential-derivative systems from assuming an authoritarian and totalitarian identity is the principle of decentralization. Decentralization can be realized at different levels, from empowerment of local governments to federalism. Turkey, too, has to develop a decentralization model that envisages a fair and efficient distribution of power and resources between the centre and the locality.

## CONCLUSION

Systems of government do not produce the same results in every country. A system of government that ensures political and economic stability in one country may create the opposite state of affairs in another country, upsetting political and economic balances. A system of government that strengthens democracy in one country may cause the opposite effect in another, and damage democracy.

This experience, filtered through history, shows that it is not only a matter of choosing a system of government. The degree of compatibility of the chosen system with the political culture of the country in which it will be implemented is as important as the system of government itself, if not more so. In other words, for democracy to be protected and for a system of government to fulfil the functions expected of it, the characteristics of the political culture and the characteristics of the system of government must be compatible.

Presidency, like parliamentarism, is a democratic system. However, in order for a presidential system to produce a democratic, pluralistic, balanced and effectively functioning state structure, the political culture in a country must have certain characteristics. These include a strong separation of powers, a strong democratic tradition, an independent judiciary, an “undisciplined” party system, a decentralized administrative model and an active civil society.

Looking at the political culture in Turkey from this perspective, it is obvious that the outlook is not very promising. In Turkey, the rule of thumb is not the separation of powers, but the unity of powers. The democratic tradition is weak. The judiciary has always been subordinated to the executive. Parties are disciplined. The administrative structure is rigidly centralized. Civil society is far from being effective.

In short, it is not easy to establish a real presidential system in Turkey. First of all, this fact must be recognized. A presidential system cannot be established simply by changing certain provisions in the constitution that specify the system of govern-

Those who aim for a genuine presidential system must simultaneously address two dimensions of the issue, one legal and the other social.

ment. Therefore, those who aim for a genuine presidential system must simultaneously address two dimensions of the issue, one legal and the other social.

First, constitutional-legal arrangements should be made in accordance with the spirit of the system. Undoubtedly, the specific conditions of the country will be taken into account. However, the introduction of rules that would represent a definite deviation from the presidency (for example, combining the powers in one person instead of separating them) should be avoided on these grounds.

Second, efforts should be made to create a culture that protects the structure and institutions of the presidential system. Culture does not emerge suddenly and spontaneously; it requires time and effort. The presidential system can only survive in a pluralist, liberal and democratic culture. For this reason, those in favour of a real presidency should devote a large part of their time to working for the establishment of such a culture at all levels of the social structure.

Constitutional-legal arrangements should be made in accordance with the spirit of the system. Efforts should be made to create a culture that protects the structure and institutions of the presidential system.

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WHAT KIND OF PRESIDENTIAL SYSTEM?

## Ankara Institute

The Ankara Institute is an independent and non-partisan research institution that focuses on political, economic, and geopolitical studies in Turkey and worldwide. The Institute, which performs regularly-based research on democratization, political pluralism, participation, accountability, and transparency, especially topics concerning Turkey's political and social life, has been the source of independent analysis and pluralistic dialogue. We offer solutions and draw roadmaps to Turkey's challenges.

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## Centre for Applied Turkey Studies (CATS)

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## VAHAP COŞKUN

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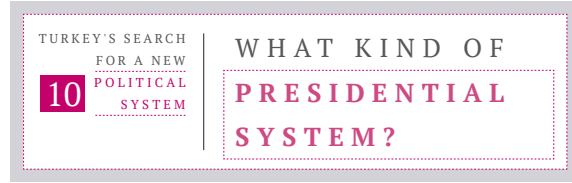
Federal Foreign Office











The system debate is arguably the most pressing and consequential subject of Turkish politics. Turkey has been having a governmental system discussion for a period of time, and the next few years will appear to be in intense debate and search.

Turkish parliamentary system experience (1876-2017) often dealt with interruptions. As a result, it has not only failed to produce general satisfaction in politics and society but also has been unsuccessful in yielding economic stability. Similarly, the outcome of the last five years of the Presidential Government System (or the Presidential System with its widespread use) could not generate stability.

The search and discussion of the governmental system appear to be the most critical topic of politics for the next few years. Regardless of the outcome of the June 2023 elections, the system debate will be the most crucial topic of politics in the short term.

Meeting this demand and preparing enhanced research on the governmental system will play an essential role in the quest for a possible change.

Comprehensive research should present a comparative, global, political, and constitutional base for the debates and assist decision makers in political parties and the public in finding an enriched discussion floor.

Within the framework of this program, Ankara Institute plan to publish ten academic analyzes that will contribute to the search for systems over the next year in order to meet this end.

The research plans to conduct two workshops with the participation of stakeholders that we predict will contribute to the system discussion and hold a detailed public opinion survey.

What Kind of a Presidential System by Vahap Coşkun is the last report of the 10 academic paper series.