

## Presidential Elements in Government

### Turkey

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History of the Turkish Presidency – Powers and status of presidents under the Constitutions of 1961 and 1982 – *Parlementarisme atténué* – A veto players system – Performance of individual presidents: guardian and partisan presidencies – Introduction of the principle of direct election of the president in 2007: not part of a well-thought out constitutional engineering scheme – Seeds of instability

Parliamentarism has been one of the defining characteristics of the Turkish constitutional system. The Ottoman Constitution of 1876 established a ‘parliamentary monarchy’. While the Constitution of 1921, drawn up during the War of Independence, established an ‘assembly government’, the Constitution of 1924, coming into effect after the promulgation of the Republic in 1923, added parliamentary elements to the latter. The preference of the makers of the Constitution of 1961, in turn, was a classical parliamentary system. The current Constitution, which has been in force since 1982, preserved basically the governmental system formed by the Constitution of 1961, however the presidential powers and prerogatives were strengthened. Recent constitutional amendments, accepted through a nation-wide referendum on 21 October 2007, make the President potentially even more powerful by introducing the principle of ‘popular election of the President’. When we overview the relatively long history of parliamentarism in Turkey, we clearly see that its presidents have always been more active and stronger than presidents in the classical parliamentary system.

This article consists of five sections. First, I summarise the historical development of the Turkish Presidency. The second section aims at explaining the legal characteristics of the office of the President under the constitutions of 1961 and 1982, the third at revealing the inner logic of the governmental system under these two constitutions. The fourth section reviews the performance of the presidents elected under the Constitution of 1982. The recent political/constitutional

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crisis, erupting during the election of the incumbent President Abdullah Gül, is the subject of the last section. I conclude by shortly commenting the potential implications for the Turkish governmental system of the 2007 constitutional amendments.

## HISTORICAL BACKGROUND

Experimenting with constitutional government in Turkey harks back to the Ottoman Empire.<sup>1</sup> The first constitution in the Ottoman-Turkish constitutional history came into effect in 1876. A reformist group, known as the ‘Young Ottomans’, was the driving force behind the Constitution. They saw the Western political institutions, particularly the system of ‘parliamentary monarchy’, as the ‘cure-all’ for the growing political, social, and economic problems of the Empire.<sup>2</sup> Sultan Abdülhamid II, succeeding to the throne with the support and approval of the ‘Young Ottomans’, promulgated the Constitution of 1876,<sup>3</sup> which marked the beginning of the ‘First Constitutional Period’ in the Ottoman Empire. The 1876 Constitution not only guaranteed the basic rights and freedoms<sup>4</sup> of the Ottomans,<sup>5</sup> but also brought about several novel institutions, such as a bicameral legislature (*Meclis-i Umumi*; Article 42) and a dual executive structure, comprising the Sultan and the ‘Council of Ministers’ (*Heyet-i Vükela*).

In reading the Constitution, one gets the impression that it established a ‘limited monarchy’. This would be a hasty conclusion. The Sultan, bearing the title of the ‘Supreme Caliph’,<sup>6</sup> was able to control the whole state machinery thanks to

<sup>1</sup> One should note that before the promulgation of the Constitution of 1876, there were significant constitutional developments. Particularly in the ‘Reform Period’, the Sultan formally recognised for the first time the basic rights and freedoms of his subjects, particularly those of non-Muslims, in various rescripts, such as the ‘Rescript of Tanzimat’ of 1839 and the ‘Rescript of Islahat’ of 1856. Although these documents were not legally enforceable, they sowed the seeds of constitutional government in the Ottoman Lands. For details, see R.H. Davison, *Reform in the Ottoman Empire, 1856-1876* (Princeton, Princeton University Press 1963).

<sup>2</sup> Cemil Koçak, ‘Osmanlı/Türk Siyasi Geleneğinde Modern Bir Toplum Yaratma Projesi Olarak Anayasanın Keşfi, Yeni Osmanlılar ve Birinci Meşrutiyet’ [Describing the Constitution as a Project of Constructing a New Society in the Ottoman/Turkish Tradition] in M.O. Alkan (ed.), *Modern Türkiye’de Siyasi Düşünce, C. 1, Tanzimat ve Meşrutiyet’in Birikimi* [Political Thought in Modern Turkey, Vol. 1, Heritage of Tanzimat and Meşrutiyet] (İstanbul, İletişim 2001) p. 72 at p. 79.

<sup>3</sup> For the English translation of the Constitution of 1876, see ‘The Ottoman Constitution’, 2 *The American Journal of International Law* (1908) p. 367.

<sup>4</sup> ‘Right to liberty’ (Art. 10), ‘freedom of the press’ (Art. 12), and ‘right to property’ (Art. 21) were examples of basic rights and freedoms, recognised by the Constitution.

<sup>5</sup> Art. 8 of the Constitution provided that: ‘All subject of the Empire are called Ottomans, without distinction, whatever faith they profess...’

<sup>6</sup> Art. 4.

his constitutional powers<sup>7</sup> as well as his authority ensuing from the imperial tradition. In 1877, Abdülhamid II prorogued Parliament and shelved the Constitution. During the following period, Abdülhamid II's autocracy incited opposition throughout the Empire. Various reformist groups, known as the 'Young Turks', organised themselves under the name of the 'Committee of Union and Progress' (CUP) and began to campaign for the reinstatement of the Constitution of 1876. Facing such growing opposition, Abdülhamid II yielded to their demands. The Constitution of 1876 was restored in 1908. This was the beginning of the 'Second Constitutional Period' in the Ottoman Empire.<sup>8</sup> Soon afterwards new parliamentary elections were held, from which the CUP emerged as the victor. Following the suppression of a counter-coup, organised by the Islamist groups against the nascent constitutional regime, Abdülhamid II was forced to abdicate and was succeeded by his brother Mehmet V.<sup>9</sup>

After obtaining full political power, the CUP ventured on extensive constitutional amendments, which came into effect in 1909, including those aiming to convert the governmental system of the Empire into a genuine parliamentary monarchy.<sup>10</sup> The political accountability of the Council of Ministers to Parliament and the 'principle of countersignature' were introduced (Article 30). The procedure for the formation of the Government was also changed: ministers were to be appointed again by the Sultan, but upon the proposal of the Grand Vizier.<sup>11</sup> Moreover, the Sultan's right to dissolve Parliament was significantly restricted.<sup>12</sup> True, these were really promising steps, but it soon became apparent that time was not ripe for the emergence of a constitutional government in the Ottoman Lands. Ironically enough, the CUP, fighting against Hamid's autocracy in the past, became the architect of a military dictatorship and began to rule the country in an absolute manner.<sup>13</sup>

Turks became acquainted with a 'parliament' during the First and the Second constitutional periods, but not with 'parliamentary system of government' in the

<sup>7</sup> Art. 7 of the Constitution enumerated the powers of the Sultan, including significant appointive powers, powers concerning foreign affairs, powers concerning judicial function. Apart from these, what was important in terms of the governmental system established by the Constitution of 1876 was that the Sultan had the right to dissolve the Chamber of Deputies, whenever he deemed it necessary.

<sup>8</sup> For details, see F. Ahmad, *The Making of Modern Turkey* (London, Routledge 1993) p. 31-37.

<sup>9</sup> For details, see V.R. Swenson, 'The Military Rising in Istanbul 1909', 5 *Journal of Contemporary History* (1970) p. 171.

<sup>10</sup> For an analysis of the 1909 Amendments, see B. Tanör, *Osmanlı-Türk Anayasal Gelişmeleri* [Ottoman/Turkish Constitutional Developments] (İstanbul, Yapı Kredi Yayınları 1998) p. 192-197.

<sup>11</sup> Revised version of Art. 27.

<sup>12</sup> Revised versions of Art. 7 and Art. 35.

<sup>13</sup> For details, see B. Lewis, *The Emergence of Modern Turkey*, 2<sup>nd</sup> edn. (Oxford, Oxford University Press 1968) p. 211-227.

real sense. Even the Constitution of 1921,<sup>14</sup> which was drawn up under the extraordinary conditions of the ‘Turkish War of Independence’, failed to establish such a system. The Constitution of 1921 envisaged an ‘assembly government’, based upon the principle of the ‘supremacy of parliament’.<sup>15</sup> According to this system, executive as well as legislative competences were in the hands of the ‘Grand National Assembly’ (GNA), which was the sole and real representative of the nation.<sup>16</sup> The Assembly, however, performed its executive function through the ‘Executive Ministers Committee’ (*İcra Vekilleri Heyeti*), which was appointed and dismissed by the Assembly.<sup>17</sup> The Executive Ministers Committee elected one of its members ‘Chairman’.<sup>18</sup> The Executive Ministers Committee and its Chairman were not the equivalent of the Cabinet and the Prime Minister in a classical parliamentary system: they were merely the administrative arms of the Assembly. There was no separate President as the Head of State: ‘the President of the Grand National Assembly’ assumed the role of the President. The President of the Grand National Assembly, was also *ex officio* Chairman of the Executive Ministers Committee.<sup>19</sup>

The 1921 Constitution was drawn up mainly to serve the needs of the newly-established National Assembly. It was more like an undetailed ‘parliamentary code of conduct’ than a thorough constitution in a modern sense; for example, it did not include a catalogue of fundamental rights and freedoms. The importance of this document, however, lies in its inclusion of the principle of ‘national sovereignty’ for the first time in Ottoman-Turkish constitutional history. The adoption of this principle paved the way for the transition from ‘monarchy’ to ‘republic’, which was formally promulgated on 29 October 1923 through a series of amendments to the Constitution of 1921. These amendments also created the Office of the President. Mustafa Kemal, the national leader of Turkey, was elected as the first President of the country on the same day as the promulgation of the Republic.

The governmental system of the 1924 Constitution,<sup>20</sup> the first Constitution of the young Republic, resembled the governmental system of the Constitution of

<sup>14</sup> For the English translation of the Constitution of 1921, see S. Kili, *Turkish Constitutional Developments and Assembly Debates on the Constitutions of 1924 and 1961* (Istanbul, Robert College Research Center 1971) p. 160-162. For the analysis of the Constitution of 1921, see E. Ozbudun, *1921 Anayasası [The Constitution of 1921]* (Ankara, Atatürk Araştırma Merkezi 1992).

<sup>15</sup> For the ‘assembly government’, see K. Loewenstein, *Political Power and the Governmental Process* (Chicago, The University of Chicago Press 1962) p. 79-85.

<sup>16</sup> Art. 2

<sup>17</sup> According to Art. 8 of the Constitution: ‘For executive matters, the Assembly gives direction to the Ministers and, if necessary, changes them.’

<sup>18</sup> Art. 9.

<sup>19</sup> Ibid.

<sup>20</sup> For the English translation of and comments on the Constitution of 1924, see E.M. Earle, ‘The New Constitution of Turkey’, 40 *Political Science Quarterly* (1925), p. 73.

1921: an ‘assembly government’, but with ‘parliamentary’ overtones. Again ‘The legislative and executive powers are vested and centred in the Grand National Assembly, which concentrates these two powers in itself’ (Article 5), while neither the President nor the Government had the right to dissolve the Assembly. As for the ‘parliamentary’ overtones: although the executive power was vested in the Assembly, it was to exercise it through the President of the Republic and a Government; the Assembly controlled the acts of the Government and could at any time withdraw power from it.<sup>21</sup> Also, the procedure of government formation was similar to that in parliamentary systems. The President, elected by the Assembly, designated the Prime Minister from among the deputies and the Prime Minister chose the other members of the Government, also from among the deputies.<sup>22</sup> The Prime Minister, having obtained the approval of the President of the Republic, presented the list of the members of the Cabinet to the Assembly; the Government, in turn, had to present its program to the Assembly for approval. Hence, because the Constitution of 1924 did not give the Assembly the entire authority for forming the government, it showed a tendency towards the principle of separation of power as applied in parliamentary systems.<sup>23</sup> Article 46, introducing the collective responsibility of the Ministers for the general policy of the Government, further underlined the parliamentary characteristic of the Constitution.

With respect to the main topic of the current article, the powers and status of the President were reformulated to bring the governmental system closer to the classical parliamentary system. The President was elected for one assembly term, i.e., for four years, by the Assembly;<sup>24</sup> he shared the executive power with the Government and bore the title of ‘Head of the State’;<sup>25</sup> he was not politically responsible for his acts, which all had to be countersigned by the Prime Minister and the concerning Minister(s).<sup>26</sup> In sum, the Constitution intended to create a mainly ‘ceremonial presidency’.

Although the President was a figurehead on paper, the presidents serving under the Constitution of 1924 were considerably powerful.<sup>27</sup> That means that in reality the system worked differently than envisaged. Indeed, developments in this period verified Karl Loewenstein’s argument on the assembly government system:

<sup>21</sup> Art. 7/2.

<sup>22</sup> Art. 44.

<sup>23</sup> See İ. Arsel, ‘Constitutional Development in Turkey since Republic’, 18 *Ankara Üniversitesi Hukuk Fakültesi Dergisi* (1961), p. 37 at p. 47.

<sup>24</sup> Art. 31.

<sup>25</sup> Art. 32.

<sup>26</sup> Art. 39.

<sup>27</sup> For the powers of the President, see ‘Section III’ of the Constitution, titled ‘The Executive Power’.

There is no other form of constitutional government which lends itself so readily to the domination of the state by a strong personality, or group, faction or party.<sup>28</sup>

When revolutionary leaders of the National Independence War, namely Mustafa Kemal Atatürk and İsmet İnönü, became president, their popularity and charisma made them the dominant figures in the political scene. The indisputable authority of the presidents in the early years of the Republic, however, cannot be explained solely by the degeneration of the assembly government or the personalities of the presidents; one should take also into account the fact that *de facto* single-party rule was prevalent in the country at the time. Thanks to party discipline, the President, the Government and the parliamentary majority aligned on the same ideological lines under the umbrella of the ‘Republican People’s Party’ (RPP). Thus the President, who was the Chairman of the RPP at the same time, came to the fore within such hierarchical power structure. According to C.F. Strong, in practice and compared to the American President,

... the Turkish President is much more powerful, for, since he is the leader of the party organization of the majority party in the Assembly which elects him, he can, in fact, sway that Assembly as he likes.<sup>29</sup>

The victory of the ‘Democratic Party’ (*Demokrat Parti*, [DP]) in the Elections of 1950 marked the end of single-party rule in Turkey. Celal Bayar and Adnan Menderes became the President and the Prime Minister respectively under multi-party politics.<sup>30</sup> Although this was an historical overturn in terms of the transformation of Turkey’s political regime, the basic power pattern remained unchanged as far as the governmental system was concerned. Just as under the RPP rule, the President, the Government and the parliamentary majority came from the same governing party, i.e., the DP. Again, the President was the dominant figure. According to George Harris:

Although [Bayar] took the presidency, an office without formal executive power, he chose Adnan Menderes as prime minister, a person who could not serve as a check on Bayar’s more imprudent actions. Bayar’s presidency was an imperial one, where despite lack of organic ties to the DP, he in effect shared power with Menderes in partisan fashion.<sup>31</sup>

<sup>28</sup> K. Loewenstein, ‘The Presidency Outside the United States: A Study in Comparative Political Institutions’, 11 *The Journal of Politics* (1949), p. 447 at p. 476.

<sup>29</sup> C.F. Strong, *Modern Political Constitutions*, 4<sup>th</sup> ed. (revised) (London, Sidgwick & Johnson Limited 1952) p. 250.

<sup>30</sup> For the analysis of transition to democracy in Turkey, see K.H. Karpat, *Turkey’s Politics: The Transition to a Multi-Party System* (Princeton, Princeton University Press 1959).

<sup>31</sup> G. Harris, ‘Celal Bayar: Conspiratorial Democrat’, in M. Heper and S. Sayari (eds.), *Political Leaders and Democracy in Turkey* (Lanham, Maryland, Lexington Books 2002) p. 45 at p. 56-57.

The DP's rule was corrupted into a 'tyranny of the majority' in the course of time and the Party gradually came to be seen as a veritable threat to the Republic by the bureaucratic elites and intelligentsia. Undoubtedly, the anti-secular bent of the Party contributed to its negative image. As a result, the armed forces, perceiving itself traditionally as the 'Guardian of the Republic', engineered a coup on 27 May 1960.<sup>32</sup> Following a transitional military regime, a constituent assembly was created to draw up a new constitution. The end product was a highly liberal document with a rich catalogue of fundamental rights and freedoms, adopted through a nation-wide referendum in 1961.<sup>33</sup>

The Constitution of 1961 remained in force until the Coup of 1980. The period between 1961 and 1980 saw ideological polarisation between rightist and leftist groups, finding its reflections in both civil society and political society. This polarisation was frequently transformed into violent confrontations between these forces. On 12 March 1971, the military issued a memorandum reminding the civil authorities of their responsibilities in the face of the deteriorating political situation. The top commanders declared that unless necessary measures were taken by the civil authorities, they were to take over the administration of the country in accordance with the powers vested in them by laws to protect and preserve the Republic.<sup>34</sup> Under this threat the 'Justice Party' (*Adalet Partisi* [JP]) Government resigned and until 1973 Turkey was ruled by a technocratic government with no political party affiliation.

In spite of the intervention of the military, political violence and terror, claiming more than 5000 people's lives, continued. Just before the 12 September 1980 Coup, the country was on the verge of civil war. Although the coup restored peace and order, the repressive military regime of three years left deep scars on the collective political memory of Turkish society. The Constitution of 1982 was drawn up in such an atmosphere by a military-appointed constituent assembly.<sup>35</sup>

<sup>32</sup> See G.S. Harris, 'The Causes of the 1960 Revolution in Turkey', 24 *Middle East Journal* (1970) p. 438.

<sup>33</sup> For the English translation of the Constitution of 1961, see Sadik Balkan, Ahmet E. Uysal and Kemal H. Karpat (trans.), *Constitution of the Turkish Republic* (Ankara, Committee of National Unity 1961). For the making process of the 1961 Constitution, see W.F. Weiker, *The Turkish Revolution 1960-1961* (Washington, D.C., The Brookings Institution 1963), p. 65-72.

<sup>34</sup> For more information, see F. Ahmad, *The Turkish Experiment in Democracy 1950-1975* (London, C. Hurst & Company 1977) p. 288-295.

<sup>35</sup> See, for the English translation of the Constitution of 1961, *The Constitution of the Republic of Turkey* (Ankara, Prime Ministry, Directorate General of Press and Information 1984); See also 'The Official Website of the Turkish Grand National Assembly': <[www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm](http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm)> (visited on 2 July 2008). For the making process of the 1982 Constitution, see C.H. Dodd, *The Crisis of Turkish Democracy* 2<sup>nd</sup> edn. (Wisdom, The Eothen Press 1990) p. 73-86.

## STATUS OF THE PRESIDENT IN THE CONSTITUTIONS OF 1961 AND 1982

The parliamentary governmental system can be defined in its minimal sense as ‘...a system of government in which the Prime Minister and his or her cabinet are accountable to any majority of the members of parliament and can be voted out of office by the latter...’<sup>36</sup> This definition, undoubtedly, captures the central tenet of the parliamentary system, but certain authors added other elements. Lijphart, for example, has identified several other characteristics: parliamentary systems have prime ministers selected by the legislature and at least formally collective or collegial executives. All these elements can be found in the constitutions of 1961 and 1982 with slight differences.<sup>37</sup>

*Government’s political responsibility to Parliament;*<sup>38</sup> A political party group or a certain number of deputies (ten, according to the Constitution of 1961, twenty, according to the Constitution of 1982) may call for a vote of no confidence against the Government. The Council of Ministers or a Minister can be unseated, if the vote of no confidence is supported by an absolute majority of the total number of members of the Assembly. Differing from the Constitution of 1961, the 1982 Constitution clarifies that only ‘no’ votes are counted.

*Selection of the Prime Minister by Parliament.* The Prime Minister is appointed by the President from among the members of the Assembly.<sup>39</sup> However, following the reading of the Government’s Programme before the Assembly a vote of confidence takes place.<sup>40</sup> That means that, although the Prime Minister is appointed by the President, he or she is practically selected by the Assembly, because the vote of confidence appears as the precondition of the Government taking office.

*The collegiality of the government.* According to Article 112 and Article 105 of the Constitution of 1961 and the Constitution of 1982 respectively, ministers are ‘jointly responsible’ for the implementation of the Government’s general policy. One may therefore assume that both 1961 and 1982 constitutions established a parliamentary system of government. However, our analysis would be incomplete, if we did not investigate the powers and position of the President under the respective constitutions.

Alan Siaroff suggests that a typical ‘parliamentary’ president holds far less power than a president in a presidential system. In his analysis, based on such criteria as

<sup>36</sup> W.C. Müller, T. Bergman, and K. Strøm, ‘Parliamentary Democracy: Promise and Problems’, in K. Strøm, et al. (eds.), *Delegation and Accountability in Parliamentary Democracies* (Oxford, Oxford University Press 2006) p. 4 at p. 13.

<sup>37</sup> A. Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven, Yale University Press 1984) p. 68; A. Lijphart, ‘Introduction’, in A. Lijphart (ed.), *Parliamentary versus Presidential Government* (Oxford, Oxford University Press 1992) p. 3.

<sup>38</sup> Art. 89 (1961); Art. 99 (1982).

<sup>39</sup> Art. 102 (1961); Art. 109 (1982).

<sup>40</sup> Art. 103/2 of the Constitution of 1961; Art. 110/2 of the Constitution of 1982.



the mode of election of the president, the existence of a legislative veto and of emergency and/or decree powers, his role in government formation and foreign policy, etc., a typical presidential system, the United States, scored '7', whereas a typical parliamentary system, Germany, scored nought. Within this framework, Turkey's scores are '2' (1961-1973; 1973-1980) and '3' (1983-present). Siaroff's study clearly indicates that the Turkish presidents (both under the 1961 and 1982 constitutions) are not similar to the presidents in classical parliamentary systems.<sup>41</sup>

This conclusion, however, needs elaboration. First, the margin between the scores of the presidents in the two constitutions is very narrow in Siaroff's analysis. This is misleading. For the political weight of the Presidency in the Constitution of 1961 is quite different from that in the Constitution of 1982. Second, a more complete and careful scrutiny of the powers of the President under the Constitution of 1982 would have elevated the score of '3'.

The following tenets of the Presidency in the Constitution of 1961 were consistent with the classical model of parliamentary government. First, the President was elected by the Assembly for a term of seven years. Re-election was not allowed consecutively. Only members of the Assembly who were over forty years of age and had received higher education could become president. A two-thirds majority of the plenary session was required for his election. If such majority was not obtained in the first two ballots, an absolute majority was sufficient.<sup>42</sup> Second, the Presidency was largely a 'ceremonial office'. According to Article 97, the President was the 'Head of State', whose essential duty was to represent the Turkish Republic and the integrity of the Turkish Nation. That means that he or she was supposed to be above day-to-day politics. In connection with the latter, the President possessed no real executive authority. The presidential powers enumerated in the Constitution, such as presiding over the Council of Ministers whenever he deemed it necessary, dispatching representatives of the Turkish State to foreign states, receiving the representatives of foreign states, ratifying and promulgating international conventions and treaties and commuting or pardoning, were symbolic in nature.<sup>43</sup> Third, mostly because of his or her symbolic status, the President bore no political responsibility for his actions related with his duties.<sup>44</sup> In accordance with the principle of 'counter-signature', all presidential decrees must

<sup>41</sup> A. Siaroff, 'Comparative Presidencies: The Inadequacy of the Presidential, Semi-presidential and Parliamentary Distinction' 42 *European Journal of Political Research* (2003) p. 287.

<sup>42</sup> Art. 95 (1961).

<sup>43</sup> Art. 97/2 (1961).

<sup>44</sup> The only way to dismiss the President was through the 'impeachment' procedure in Art. 99: 'The President of the Republic may be impeached for high treason upon the proposal of one third of the plenary session of the Turkish Grand National Assembly, and conviction of high treason shall require the vote of at least a two thirds majority of the joint plenary session of both legislative bodies.'

be countersigned by the Prime Minister and the relevant Minister(s), who were accountable for these decrees.<sup>45</sup> Fourth, the President had the right to appoint the government members, but upon the proposal of the Prime Minister. He had no say in the dismissal of ministers.<sup>46</sup> Fifth, although the President had the power to dissolve the Assembly, the use of this power was subject to limitations.<sup>47</sup> Sixth, the President had to be 'impartial'. Paragraph 2 of Article 95 of the Constitution read that

The President elect shall dissociate himself from his party, and his status as a regular member of the Grand National Assembly shall be terminated.

This provision was particularly important, because the Constitution, in that way, wanted to break the triad of 'president-cabinet-parliamentary majority', which was mainly responsible for the DP's hegemony.<sup>48</sup>

While the Constitution of 1961 envisaged a 'ceremonial' president, the Framers of the Constitution of 1982 wanted a 'strong presidency'. While still chosen by the National Assembly for a seven-year term,<sup>49</sup> the President is no longer merely a 'figurehead' in terms of his constitutional powers. According to Article 104 of the 1982 Constitution, the powers of the President are divided into 'legislative', 'executive' and 'judicial' powers. The powers falling under the first category are: delivering, if he or she deems it necessary, the opening address of the Assembly on the first day of the legislative year; summoning the Assembly to meet, when necessary; promulgating laws; sending laws back to the Assembly for reconsideration; submitting laws amending the Constitution to referendum, if he or she deems it necessary; appealing to the Constitutional Court for the review of the constitutionality of laws, decrees having the force of law, and the Rules of Procedure of

<sup>45</sup> Art. 98 (1961).

<sup>46</sup> Art. 102/3 (1961).

<sup>47</sup> According to Art. 108 of the Constitution of 1961: 'If the Council of Ministers has been unseated twice by a vote of no confidence according to articles 89 and 104 of the Constitution, within a period of eighteen months, and if thereafter a third vote of no confidence is voted, the Prime Minister may request the President of the Republic to call new elections for the National Assembly. Whereupon, the President of the Republic, after consultation with the Chairmen of the legislative bodies, may decide to call new elections...'

<sup>48</sup> As I have mentioned above, although the principle of the 'impartiality of the President' was inherent in the Constitution of 1924, but not explicitly formulated. The Constitution of 1961 defined this principle clearly.

<sup>49</sup> In comparison to the 1961 Constitution, three significant differences in the mode of election have to be noted. First, re-election was not allowed. Second, not only deputies, but also ordinary citizens fulfilling the requirements of age and education and eligible to be deputies, could be elected. Third, the Constitution of 1982 stipulated the dissolution of the Assembly in case a President could not be elected within the certain time frame (original Art. 101 and 102; as explained below, in 2007 the popular election of the President was introduced).

the Assembly; calling new elections for the Assembly, under the conditions specified by the Constitution.

The list of presidential 'executive' powers is not less impressive: appointing the Prime Minister and accepting his or her resignation; appointing and dismissing Ministers upon the proposal of the Prime Minister; presiding over the Council of Ministers or calling the Council of Ministers to meet under his or her chairmanship whenever he or she deems it necessary; accrediting representatives of the Turkish state to foreign states and receiving the representatives of foreign states appointed to the Republic of Turkey; ratifying and promulgating international treaties; representing the Supreme Military Command of the Turkish Armed Forces on behalf of the Assembly; deciding on the mobilisation of the Turkish Armed Forces; appointing the Chief of the General Staff; calling the National Security Council (NSC)<sup>50</sup> to meet; presiding over the NSC; proclaiming martial law or state of emergency, and issuing decrees having the force of law, in accordance with the decisions of the Council of Ministers under his or her chairmanship; signing decrees; granting pardons on grounds of chronic illness, disability, or old age; appointing the members and the Chairman of the State Supervisory Council; instructing the State Supervisory Council to carry out inquiries, investigations and inspections; appointing the members of the Higher Education Council; appointing rectors of universities. To these add the so-called judicial powers: appointing the members of the Constitutional Court, one-fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the High Court of Appeals, the members of the Military High Court of Appeals, the members of the Supreme Military Administrative Court and the members of the Supreme Council of Judges and the Public Prosecutors.

As if these were not enough, the Constitution empowers the legislature to add other presidential powers.<sup>51</sup>

As for the 'impartiality' and 'political non-accountability' of the President, the Framers of the Constitution of 1982 preserved the former<sup>52</sup> and redefined the latter in a way to make him or her even more powerful. The first paragraph of Article 105 of the Constitution of 1982 formulates the principle of countersignature by incorporating the related provision of the 1961 Constitution almost verbatim. Accordingly, all decrees of the President have to be countersigned by the Prime Minister and the Ministers concerned and the accountability for those decrees falls upon the Prime Minister and the Ministers concerned. The Constitution of 1982, however, envisages also exceptions to this principle; the President may enact decrees by himself or herself without the countersignatures of the

<sup>50</sup> The NSC shall be discussed below.

<sup>51</sup> Art. 104 (1982)

<sup>52</sup> Art. 101 (1982).

Prime Minister and the Minister(s) concerned, if the Constitution or the relevant law stipulates so.<sup>53</sup> More importantly still, the Framers of the Constitution of 1982 excluded appeals ‘to any legal authority, including the Constitutional Court, against the decisions and orders signed by the President of the Republic on his or her own initiative in accordance with Art. 105/1.’<sup>54</sup>

Thus the 1982 Constitution provides a constitutionally ‘strong presidency’, deviating somewhat from the classical parliamentarism in the Constitution of 1961. Can we, given the quality and quantity of presidential powers, still describe the governmental system in the Constitution of 1982 as a ‘parliamentary system’? This question has been discussed at length in the pertaining literature in Turkey. It is generally accepted that although the governmental system in the Constitution of 1982 is not a classical parliamentary system, the aggrandised powers of the President do not change its fundamental parliamentary characteristic either.<sup>55</sup> Accordingly, as Ergun Özbudun rightly put it, the 1982 Constitution’s governmental system can be described as ‘*parliamentarisme atténué*’, i.e., ‘modified or weakened form of parliamentarism’.<sup>56</sup>

In practice, the Presidents were and are even more powerful than the Constitution of 1982 seems to imply. This phenomenon is the result of the inherent logic of the Turkish governmental system and of environmental factors and the personalities of the presidents. First the inherent logic.

#### THE INHERENT LOGIC OF THE TURKISH GOVERNMENTAL SYSTEM: PRESIDENTS AND VETO PLAYERS

The underlying rationale of Turkish constitutions plays a crucial role in the emergence of strong presidents. Again, we have to start with the Constitution of 1961. This was a ‘reactive constitution’, in the expression of Vernon Bogdanor.<sup>57</sup> The mission of the Framers of the 1961 Constitution was to devise institutional mechanisms which would protect the essentials of the republican regime against the ‘tyranny of the majority’. To this end, they first and foremost introduced several counter-balancing autonomous institutions. The universities and the Turkish Ra-

<sup>53</sup> Art. 105/1 (1982).

<sup>54</sup> Art. 105/2 (1982)

<sup>55</sup> For an overview of this discussion, see E. Özbudun, ‘Constitution Making and Democratic Consolidation in Turkey’, in M. Heper, et al. (eds.), *Institutions and Democratic Statecraft* (Boulder, Westview Press 1997) p. 227 at p. 236.

<sup>56</sup> E. Özbudun, *Contemporary Turkish Politics, Challenges to Democratic Consolidation* (Boulder, Lynne Rienner Publishers 2000) p. 59-60.

<sup>57</sup> A ‘reactive’ constitution is that ‘... reacting against a past of dictatorship and terror, and attempting to establish anew the norms of constitutional government...’ V. Bogdanor, ‘Introduction’, in V. Bogdanor (ed.), *Constitutions in Democratic Politics* (Aldershot, Gower 1988), p. 1 at p. 7.

dio and Television Agency were examples of such institutions *within* the executive sphere. Moreover, a second chamber, named ‘Senate’, was founded in order to harness the super-majoritarian tendencies of the ‘National Assembly’. The Framers also created powerful ‘veto players’, i.e., individual or collective actors whose agreement was necessary for a change in the status quo.<sup>58</sup> Very importantly, a Constitutional Court was created for the protection of fundamental rights and freedoms.<sup>59</sup> This was a novelty for Turkey. The second veto player, the armed forces,<sup>60</sup> had always been there and had been involved in politics in many ways before the adoption of the 1961 Constitution. The NSC, which was also introduced by the Constitution of 1961,<sup>61</sup> was merely the institutionalisation of the military’s control over politics, which had reached its peak through the Coup of 1960. After the transition to normal politics, the military returned to barracks, but left the NSC as its proxy in day-to-day politics. As Narlı put it, in the mid- and late 1960’s ‘...the military enjoyed full autonomy from the government while keeping a watchful eye over the parameters of civilian political life...’<sup>62</sup> The NSC was essentially a tool of the military, via which the top commanders could communicate their messages to the public and admonish politicians in the event that things went utterly wrong.<sup>63</sup>

<sup>58</sup> G. Tsebelis, ‘Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism, and Multipartyism’, 25 *British Journal of Political Science* (1995) p. 289 at p. 301.

<sup>59</sup> R. Devereux, ‘Turkey’s New Constitutional Court’, 7 *SAIS Review* (1963) p. 19. For the definition of the constitutional court as a veto player, see M.L. Volcansek, ‘Constitutional Courts as Veto Players: Divorce and Decrees in Italy’, 39 *European Journal of Political Research* (2001) p. 347.

<sup>60</sup> According to Tsebelis: ‘... a veto player is any player – institutional or partisan – who can block the adoption of a policy’, adding that: ‘An institutional player will not count as a veto player unless it has formal veto power.’ Tsebelis, *supra* n. 58, at p. 305. In this definition, the Military in Turkey cannot be considered as a veto player, for it has no ‘formal veto power’. Nevertheless the Military has been the most powerful actor in Turkish politics, which could effectively prevent policy changes. Such *de facto* power of the Military justifies its qualification as a veto player in a wider sense. For the authors, describing the Military in Turkey as a veto player, see L. Diamond, ‘Thinking About Hybrid Regimes’, 13 *Journal of Democracy* (2002) p. 21 at p. 23; J. Rupnik, ‘From Democracy Fatigue to Populist Backlash’, 18 *Journal of Democracy* (2007) p. 17 at p. 19. See also, Z. Sargil, ‘Europeanization as Institutional Change: The Case of the Turkish Military’, 12 *Mediterranean Politics* (2007) p. 39.

<sup>61</sup> Art. 111 of the 1961 Constitution: ‘The National Security Council shall consist of the Ministers as provided by law, the Chief of the General Staff, and representatives of the armed forces. The President of the Republic shall preside over the National Security Council, and in his absence this function shall be discharged by the Prime Minister. The National Security Council shall communicate the requisite fundamental recommendations to the Council of Ministers with the purpose of assisting in the making of decisions related to national security and coordination.’

<sup>62</sup> N. Narlı, ‘Civil-Military Relations in Turkey’, 1 *Turkish Studies* (2000), p. 107 at p. 113.

<sup>63</sup> Eric Rouleau defined the NSC as: ‘...a kind of shadow government through which the pashas [*i.e.* ‘top commanders’ in Turkish, LG] can impose their will on parliament and the government.’ E. Rouleau, ‘Turkey’s Dream of Democracy’, 79 *Foreign Affairs* (2000) p. 100 at p. 105.

When we put the presidency into the broader picture of the ‘veto players system’ of the 1961 Constitution, we clearly see that the President was not a veto player in the sense defined above.<sup>64</sup> This, however, does not mean that the President was completely out of the veto player’s game. There were various links between the President and veto players. For instance, the President could initiate the review of the constitutionality of laws by the Constitutional Court.<sup>65</sup> By wielding this power, he could contribute to the blocking of changes in the status quo. However, under the 1961 Constitution, this power was not exercised frequently by the presidents. Fahri Korutürk was the first (and the last) President to do so.<sup>66</sup>

The relations between the President and the military paint a different picture.<sup>67</sup> First, the NSC was presided over by the President.<sup>68</sup> As Tim Jacoby put it:

By arranging the political make-up of the subsequent coalition governments and threatening further interventions if their interests were not respected, the military continued to take an active part in parliamentary politics throughout the 1960’s.<sup>69</sup>

As mentioned above, the newly-created NSC was the basic means of the military’s influence on the political developments in the country.<sup>70</sup> Second, there were informal ties between the President and the military. Most importantly, all the presidents serving under the Constitution of 1961 were former high-ranking commanders. On many occasions, the presidents of the 1961 Constitution – particularly Cemal Gürsel and Cevdet Sunay – echoed the military voice in civil tones.

<sup>64</sup> On the basis of the criteria, mentioned above *supra* n. 58, Tsebelis, as a rule, does not qualify the presidents in parliamentary systems as veto players: G. Tsebelis, ‘Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis’, 93 *American Political Science Review* (1999), p. 591 at p. 593-594. Accordingly one ought not to confuse ‘veto power’ as it is used in daily parlance and the concept of ‘veto player’. If we apply Tsebelis criteria to the Turkish case, we may conclude that the Turkish President was and is not veto player, because, although he can send any law he disapproved of back to Parliament for reconsideration, if Parliament re-adopts the returned law, the President has no choice but to publish it on the Official Gazette (Art. 93 of the 1961 Constitution and Art. 89 of the 1982 Constitution).

<sup>65</sup> Art. 149 (1961).

<sup>66</sup> Korutürk made in total 6 applications to the Constitutional Court. *See* for details, *Cumhurbaşkanlığı Tarihi* [History of Presidency] 1923-2005 (Ankara, A Publication of the Office of the President 2005) p. 317-318.

<sup>67</sup> According to Art. 110 of the Constitution of 1961, the Office of the Commander-in-Chief was ‘... integrated in spirit in the Turkish Grand National Assembly and was represented by the President.’ This was, apparently, a largely symbolic position, which did not add anything to the President’s constitutional capacity.

<sup>68</sup> Art. 111 (1961)

<sup>69</sup> T. Jacoby, *Social Power and the Turkish State* (London, Routledge 2004) p. 135

<sup>70</sup> A. Bayramoğlu, ‘Asker ve Siyaset’ [Soldiers and Politics], p. 160-161 *Birikim* (2002) p. 28 at p. 38.

When we turn to the 1971-1973 Amendments in the light of the inherent logic of the Constitution of 1961, we might argue that the latter had been construed on a wrong premise. The Framers of the 1961 Constitution had introduced the veto players system with the expectation that the real threat to the republican regime would come from partisan forces, as had been the case during the rule of the Democratic Party, which controlled both the parliamentary majority and the Government. Thus they devised institutional mechanisms to prevent such forces from harming the pillars of the republican regime. However, the genuine threat for the regime came from the population. The institutional structure of the 1961 Constitution, in this respect, was not suitable to thwart such threats.

The 1971-1973 amendments can be seen as the adaptation of the defensive mechanism of the Constitution to changes in the source and type of threats to the regime. First, civil liberties and political rights, which – according to Generals – had been primarily responsible for the growing political violence and terror in the country, were curtailed. Second, the military was freed from certain institutional constraints to make it more autonomous and influential. Third, the government was strengthened. The Turkish Radio and Television Agency ceased to be an autonomous institution and the autonomy of the universities was seriously reduced.<sup>71</sup>

The Constitution of 1982, in turn, was constructed upon cumulative constitutional memory: the Framers of this Constitution combined the 1971-1973 amendments' philosophy with the veto players system. They preserved the Constitutional Court and the National Security Council as veto players and made the latter even more powerful. They also incorporated the formulation of 'more limited rights and freedoms', devised during the 1971 and 1973 amendments, but they went further than the 12 March Generals. Moreover, they abandoned the idea of counterbalancing institutions by lifting the autonomy of the universities and creating a unicameral legislature. As far as the governmental system is concerned, the framers basically accepted the idea that Turkey needed a more powerful executive, bequeathed from the 1971-1973 amendments. However, unlike the leaders of the 12 March 1971 Military Intervention, they preferred to strengthen the President, not the Government. Several reasons can be adduced for this preference, but the following explanation seems most probable. It was almost certain that Kenan Evren, the leader of the 12 September 1980 Coup, would become the next President, due to his popularity at the time and thanks to a special provision concerning the first President under the Constitution of 1982, which I shall explain below. So, the strong presidency was tailored first and foremost for Evren, who would be the guarantor and protector of the achievements of the 12 September Coup. According to Ersin Kalaycıoğlu:

<sup>71</sup> For a detailed analysis of 1971-1973 Amendments, see B. Tanör, *İki Anayasa* [Two Constitutions] 1961-1982, 2<sup>nd</sup> edn. (İstanbul, Beta 1991) p. 39-60

If the French Constitution of 1958 were designed for General de Gaulle to reign supreme in France, the 1982 Constitution was designed for General Evren to act likewise in Turkey.<sup>72</sup>

Although this comment reflects the truth, it does so only partially. A strong presidency was not only preferred because it was manufactured for Evren, but also because the Military made a long-term calculation. As put by Ergun Özbudun, the

...makers of the 1982 Constitution (themselves almost all military officers and civilian bureaucrats) assumed [the presidency] would be controlled by the military for a long time.<sup>73</sup>

### THE PRESIDENCY AT WORK

Not only the inherent logic of Turkish constitutions, but also environmental factors and the personalities of the presidents contributed to making the President relatively strong. Here, I concentrate on the tenure of the presidents elected under the Constitution of 1982: Kenan Evren, Turgut Özal, Süleyman Demirel and Ahmet Necdet Sezer. The progress of events in combination with the personal characteristics of the presidents created 'active' and 'strong' presidents. The presidencies can be categorised under two headers: first the 'partisan presidency', i.e., the President regularly acts with partisan motives; second the 'guardian presidency', the President regularly acts with the motive to protect the regime.

#### *Kenan Evren: From coup leadership to the harmonious President*

Kenan Evren was the first President under the Constitution of 1982 (9 November 1982 – 9 November 1989). Although the latter provided that the President is elected by the Assembly, Evren's coming to office was an exception based on the provisional Article 1 of the Constitution:

On the proclamation, under lawful procedure, of the adoption by referendum of the Constitution as the Constitution of the Republic of Turkey, the Chairman of the Council of National Security and Head of State at the time of the referendum, shall assume the title of President of the Republic and shall exercise the Constitutional functions and powers of the President of the Republic for a period of seven years.

<sup>72</sup> E. Kalaycıoğlu, *Turkish Dynamics, Bridge Across Troubled Lands* (New York, Palgrave Macmillan 2005) p. 128.

<sup>73</sup> Özbudun, *supra* n. 55, at p. 235.



In accordance with this provision, Kenan Evren, the leader of the 12 September 1980 Military Coup, became President on 7 November 1982 as the Constitution was approved in a referendum by 91.37% of the votes cast.<sup>74</sup>

One year after the constitutional referendum-*cum*-presidential 'election', parliamentary elections were held on 6 November 1983. Although this officially marked the end of 'military rule', the elections were not completely free and fair. The armed forces closely controlled the election process and allowed only three political parties to run in the contest: the 'National Democracy Party' (*Milliyetçi Demokrasi Partisi* [NDP]), the Populist Party (*Halkçı Parti* [PP]) and the Motherland Party (*Anavatan Partisi* [MP]). The MP, under the leadership of Turgut Özal, won the elections with the support of 45.14% of the electorate, participating in the elections, and gained 211 seats in 400-member Parliament. Thus, following a three-year interregnum, Turkey returned to multi-party politics and Özal became the first prime minister of the 'new era'.<sup>75</sup> The MP was also the winner of the 1987 elections, which gave way to the second Özal Government.

During his Presidency, and particularly in the years following the 1983 elections, Evren was one of the leading actors on the political scene in Turkey. This was not surprising. First, although military rule had ended, the armed forces were watching the developments closely. Furthermore, the top commanders responsible for the 1980 Coup did not completely leave the stage: Evren became President, whereas the other generals became the members of the 'Presidential Council'.<sup>76</sup> So, the military's presence continued to be felt in political life. Accordingly, in such a tense political atmosphere, it was not easy for the newly-elected politicians to develop themselves. Second, Evren enjoyed a huge amount of sympathy among the populace as the leader of the 1980 Coup. He was seen as a 'hero', who had stopped the bloodshed in the country and he was cheered as a man of courage and wisdom. This popularity gave him weight *vis-à-vis* the Government and Parliament. Third, Evren was personally suitable for such a role: he was a fatherly figure and enjoyed being seen as a 'mentor of the people'.

<sup>74</sup> See B. Tanör, 'Siyasal Tarih (1980-1995)' [Political History (1980-1995)] in S. Aksin, et al. (eds.), *Yakınçağ Türkiye Tarihi 2, 1980-2003* [Recent History of Turkey 2, 1980-2003] (İstanbul, Milliyet 2003), p. 45.

<sup>75</sup> F. Ahmad, 'The Turkish Elections of 1983', 122 *MERIP Reports* (1984) p. 3.

<sup>76</sup> According to Provisional Art. 2 of the Constitution of 1982: 'After the Turkish Grand National Assembly has convened and assumed its functions, the Council of National Security shall become the Presidential Council for a period of six years, and the members of the Council of National Security shall acquire the title of members of the Presidential Council. The oath they took on 18 September 1980, as members of the Council of National Security shall remain valid. Members of the Presidential Council shall enjoy the rights and immunities conferred by the Constitution on members of the Turkish Grand National Assembly. The legal existence of the Presidential Council shall terminate on the expiry of the period of six years.'

Nevertheless Evren's activities did not result in 'presidential domination'. According to Dodd: '... the presidency came to have less real power, or authority, than had been expected to be the case in 1983.'<sup>77</sup> Maybe this was because Özal acquired a high level of popularity as well (not lower than that of Evren), as a result of his natural charisma on the one hand, and his political and economic success (particularly in the first years of his Government) on the other. Accordingly, it was not so easy for Evren to brush Özal aside. Another explanation is that both Evren and Özal well understood the hardships of the transitional period, during which they occupied very critical positions. Both were aware of the fragility of newly-established institutions and behaved accordingly. What emerged was a kind of co-operation between the President and the Prime Minister. As Metin Heper and Menderes Çınar noted:

Both Özal's circumspection while pushing Evren to his proper sphere and Evren's increasing realism about the limitations of his office led to the emergence of a division of labor and a good deal of harmony between the two of them.<sup>78</sup>

Accordingly, the President dealt with internal and external security problems and issues concerning 'high politics', while the Prime Minister spent his energy mainly in economic and social policy areas.<sup>79</sup> Thus the period was ridden out with no serious intra-executive struggle.

Evren gradually positioned himself more and more as a classical parliamentary system president, while Özal became the real executive actor in the country. William Hale astutely explained why this happened:

At the outset, President Evren seems to have adopted a distinctly cautious attitude towards the process of democratisation: (this caution, it can be argued, was more than justified by Turkey's political experiences during the late 1970s). However, as time went on, and political stability appeared to be relatively well assured, he seems to have accepted that the civilian political leaders would assume fuller authority, and that his own role as President would decline correspondingly.<sup>80</sup>

One exceptional issue, from which Evren never retreated, was the protection of republican values. He particularly stood firmly against Government regulations

<sup>77</sup> C.H. Dodd, 'Kenan Evren as President: From Conflict to Compromise', in M. Heper and A. Evin (eds.), *Politics in the Third Turkish Republic* (Boulder, Westview Press 1994) p. 171 at p. 185.

<sup>78</sup> M. Heper and M. Çınar, 'Parliamentary Government with a Strong President: The Post-1989 Turkish Experience', 111 *Political Science Quarterly* (1996), p. 483 at p. 493.

<sup>79</sup> For a detailed analysis of the period, see M. Heper, 'The Executive in the Third Turkish Republic, 1982-1989', 3 *Governance* (1990) p. 299.

<sup>80</sup> W. Hale, 'Generals and Politicians in Turkey: 1983-1990', 25 *Turkish Yearbook of International Relations* (1995) p. 1 at p. 12.

that contravened the principle of secularism. Here, the words and deeds of the President perfectly paralleled those of the military, the ultimate veto player in the Turkish governmental system, which would not tolerate any kind of anti-secular activity. The headscarf issue, bringing Evren in direct confrontation with Özal, may well illustrate this point. At the outset of the story, the ‘High Education Board’ (*Yüksek Öğretim Kurulu* [YÖK]) issued a ruling on 10 May 1984, upon Özal’s request, which would ease the headscarf ban in universities. Evren sharply criticised the Government and put pressure on the YÖK to revoke its ruling,<sup>81</sup> which it did in 1987. In 1988 Parliament adopted a bill recognising the freedom of dress in higher education institutions. Evren, in response, vetoed the bill because of violation of the principle of secularism. Nevertheless the Assembly, controlled by the Özal Government, readopted the bill with a critical addition: the law-makers made it clear that covering the neck and hair because of one’s religious belief was not prohibited. This time Evren, although he had the right to send the amended bill back to Parliament, brought the case before the Constitutional Court, which annulled it on 7 March 1989.<sup>82</sup> This was the beginning of the ‘headscarf problem’ in Turkey, which still remains unsolved.

*Turgut Özal; An ambitious Premier becomes an active President*

Kenan Evren was succeeded by Turgut Özal as the second president serving under the Constitution of 1982 (31 October 1989–17 April 1993). As explained above, Özal was a well-known face in Turkish politics: he had two governments and a chequered performance history behind him when he declared his candidacy for the Presidency. Initially accomplishing remarkable achievements, which were considered by some as ‘revolutionary’,<sup>83</sup> the graph of his success began a trend downwards particularly after the elections of 1987. Thus, the opportunity of becoming president came as a salvation to him. By being elevated to this post, he could kill two birds with one stone: on the one hand he could release himself from the pressure and constraints of day-to-day politics, on the other hand he could continue to implement his radical political programme. This, however, was only possible if he was able to transform the Office of the President into an effective executive agency. The latter point, in fact, summarises the Presidency of Özal as a whole. He was a ‘reformist’ and it would be absurd to assume that he would shelve all his ‘grandiose’ plans as soon as he had passed through the door of *Çankaya*, i.e.,

<sup>81</sup> M. Aksoy, *Başörtüsü-Türban* [Headscarf-Turban] (İstanbul, Kitap Yayınevi 2005) p. 173–174.

<sup>82</sup> For details, see G. Jenkins, *Political Islam in Turkey, Running West, Heading East* (New York, Palgrave Macmillan 2008) p. 149–151.

<sup>83</sup> M. Erdoğan, ‘Türk Politikasında Bir Reformist: Özal’ [A Reformist in Turkish Politics: Özal], in İ. Sezal and İ. Dağ (eds.), *Kim Bu Özal ?* [Who is Özal ?] (İstanbul, Boyut Kitapları 2001) p. 15.

the presidential palace. On the contrary, it was to be expected that he would attempt to continue to 'execute' his political programme, in every possible way.<sup>84</sup> Indeed, he exploited every legal as well as political opportunity to convert the Presidency into the hub of the executive machinery.

Özal's coming to the Presidency was loaded with controversy. Most notably, opposition parties harshly criticized Özal on the ground that, as proven by the local elections of 26 March 1989, the popularity of the MP had decreased dramatically,<sup>85</sup> thus the election of the President by such a party, enjoying only the support of a small portion of the electorate, was morally and politically unacceptable.<sup>86</sup> Although the opposition parties boycotted the presidential elections in the Assembly, the support of the MP was sufficient to elevate Özal to the post.

Once he was in office, it immediately became obvious that Özal would not fit into the classical parliamentary framework. Özal's 'executive capacity' was based on three pillars: first, he appointed Yıldırım Akbulut as Prime Minister (9 November 1989). Akbulut also became Chairman of the MP with the support of Özal (16 November 1989). From the beginning, it was apparent that Akbulut, 'a political (and intellectual) nonentity'<sup>87</sup> in the words of Zürcher, would remain subservient to Özal and apply his directives without questioning them. Second, Özal was the founder and *de facto* leader of the MP, the majority party at the time. Although he was supposed to sever all his ties with his party,<sup>88</sup> he continued to act as the head of the party. His credibility in the eyes of Party members enabled him to control the parliamentary majority in many instances. Third, he occasionally was directly involved in political issues, thereby stretching the constitutional limits of the Presidency. All these three elements made up not only a 'strong president', which is compatible to a certain extent with the spirit of the Constitution of 1982, but also a 'partisan president',<sup>89</sup> which explicitly contravenes the constitutional principle of the 'impartiality of the president'.

<sup>84</sup> During his Presidency, Özal particularly focused on economy and foreign affairs. For the leading role of Özal in these areas see respectively: Z. Öniş, 'Turgut Özal and His Economic Legacy: Turkish Neo-liberalism in Critical Perspective', 40 *Middle Eastern Studies* (2004) p. 113; B. Aral, 'Dispensing with Tradition? Turkish Politics and International Society During the Özal Decade 1983-93', 37 *Middle Eastern Studies* (2001) p. 72.

<sup>85</sup> In the 1983 Parliamentary elections the MP obtained 45.14% of the votes cast with 211 seats in the 400-member Parliament; in the 1987 Parliamentary elections 36.31% of the votes cast with 292 seats in the 400-member Parliament; and in the 1989 Local Elections 'only' 23.51% of the votes cast. (The winning party in the local elections was the left-wing 'Social Democratic People's Party' (*Sosyal Demokrat Halkçı Parti* [SDPP] with 33.16% of the votes cast.)

<sup>86</sup> Ahmad, *supra* n. 8, at p. 199.

<sup>87</sup> E.J. Zürcher, *Turkey: A Modern History* (London, I.B. Tauris 2004), p. 287.

<sup>88</sup> Art. 101/4 (1982)

<sup>89</sup> As explained above, Celal Bayar was the first example of the 'partisan president'.

As could be expected, Özal's partisan style of Presidency sparked intra-executive conflict even during the government of Özal's own party. Mesut Yılmaz, the Minister of Foreign Affairs at the time, was elected the Chairman of the MP in the biennial party congress, held in 15 June 1991. Soon afterwards he took the seat of Akbulut as Prime Minister. Yılmaz hinted from the beginning that he would not accept to be a prime minister like Akbulut. Although he pointed out that Özal was the 'spiritual leader' of the MP and he never questioned the legitimacy of his Presidency, he repeatedly reminded Özal that the President should not step into the realm of Government jurisdiction. Such attitude, needless to say, was much to the chagrin of Özal. So, soon after the appointment of Yılmaz as Prime Minister the relations between the Government and the President began to deteriorate.<sup>90</sup>

The situation even got worse after the early general elections of 20 October 1991, from which a coalition government emerged. During the election campaign, there were signals that the coming period would really be problematic. Özal's blatant support for the MP during the election campaign was harshly criticised by the opposition parties. Süleyman Demirel, the leader of the True Path Party (*Doğru Yol Partisi* [TPP]), successor of the JP, sarcastically commented that opposition parties fought against not only the MP, but also the 'Çankaya Party'.<sup>91</sup> Demirel, who was supported by Erdal İnönü, the leader of the SDPP, went so far as to promise the people to remove Özal from office after the elections.

Süleyman Demirel's TPP came out as the leading party from the ballot box with the support of 27% of the votes cast. The MP and SDPP mustered 24% and 20.8% of the votes cast respectively. Upon Yılmaz's declaration that the MP would not take part in any coalition government, a TPP-SDPP Government appeared as the only combination which could secure a vote of confidence in Parliament. Although Demirel and İnönü could not fulfil their promises of ousting Özal from the Office of the President – they planned to unseat Özal by shortening the term of the President but did not command a sufficient majority in Parliament to change the Constitution – they actively struggled against Özal's dominance. Thus, during the TPP-SDPP Coalition Government, an uneasy 'cohabitation period' existed in Turkish politics.

On the level of relations between the President and the veto players, Özal's Presidency was different from Evren's Presidency. First, as said above, Evren was in line with the military. Özal, in turn, got along well with the armed forces, but

<sup>90</sup> For the relations between Özal and Yılmaz generally see E. Özbudun and A. Çınar, 'Mesut Yılmaz: From Özal's Shadow to Mediator', in M. Heper and S. Sayarı (eds.), *Political Leaders and Democracy in Turkey* (Lanham, Maryland, Lexington Books 2002) p. 181.

<sup>91</sup> M. Heper, 'Turgut Özal's Presidency: Crisis and the Glimmerings of Consensus', in M. Heper and A. Evin (eds.), *Politics in the Third Turkish Republic* (Boulder, Westview Press 1994) p. 187 at p. 196.

never accepted the military's dominance in politics. In fact, one of Özal's most courageous reform plans was to subordinate the military to the executive, as in all contemporary liberal-democratic regimes. During both his premiership and his presidency, he attempted to realise this goal.<sup>92</sup> Özal also stood ideologically aloof from the Generals. He portrayed himself as a devout Muslim and took some steps to bring religion more into the public sphere, as was seen in the headscarf controversy. Needless to say, his conservative moves were not welcomed by the military's High Command. Second, Evren actively exercised his veto power and right to apply to the Constitutional Court to attempt to eliminate those laws violating the constitutional principle of secularism. Özal, again unlike Evren, did not see his veto power and right to apply to the Constitutional Court as a means to stop anti-regime forces on legal grounds; rather he used these as a weapon in his political struggle against the TPP-SDPP coalition government, more specifically against his arch-rival Demirel. Controversies around a series of the so-called 'bypass laws' may illustrate the latter.

At the peak of the quarrel between the President and Government, Özal developed a practice of delaying on signing or refusing to sign governmental decrees concerning the appointment of key bureaucrats. By March 1993, for example, 47 such decrees were waiting to be signed by the President.<sup>93</sup> As a counter-attack, the Government prepared three bills, stripping the President of his powers to sign appointment decrees. Özal criticised this manoeuvre very harshly and accused the Government of 'opening a war' against the President.<sup>94</sup> Especially the 'first bypass law', revoking the requirement of the President's signature for the appointment of the Undersecretary of Justice, became the stake of the intra-executive struggle. Although Özal sent the bill back to the Assembly, the parliamentary majority re-adopted it. Subsequently, upon the President's application, the Constitutional Court annulled the bill, on the ground that '... all significant acts of state are enacted by the signature of the Head of State'. However, interestingly enough, the Court also added that the President may not refuse to sign a governmental appointment decree, proposed by the Government, for solely political reasons.<sup>95</sup>

As an overall conclusion, it can be said that Özal provided a bad example for future presidents. He showed how far a president can go in terms of stretching the limits set by the Constitution. More importantly, Özal's presidency created a false (and somewhat dangerous) impression that a President could do whatever

<sup>92</sup> See, G. Karabelias, 'The Evolution of Civil-Military Relations in Post-War Turkey, 1980-95', 35 *Middle Eastern Studies* (1999) p. 136.

<sup>93</sup> İ. Çevik, 'Özal Faces Another By-pass', *Turkish Probe*, 2 March 1993, p. 3.

<sup>94</sup> M. Yetkin, 'Cohabitation Turns Sour', *Turkish Probe*, 9 March 1993, p. 2.

<sup>95</sup> Decision of the Constitutional Court, dated 27 April 1993; E. 1992/37; K. 1993/18.

he pleased with impunity, in the presence of a supportive parliamentary majority and a subservient Government. None of the presidents elected under the Constitution of 1982 went so far in terms of disregarding the principle of the impartiality of the President, but undoubtedly his over-courageous style left deep scars in the political memory of Turkey.

*Süleyman Demirel: Environmental factors create a guardian President*

Upon the unexpected demise of Turgut Özal on 17 April 1993, Demirel became the third President under the Constitution of 1982 (16.05.1993-16.05.2000). Demirel's Presidency shows several similarities with that of Özal at the very outset. First, both were active in politics before becoming President. Second, both were the leader of the majority party at the moment of their election. Third, both presidents were elected in the third round in Parliament. Similarities between the two cases, however, end here. Demirel, unlike Özal, was elected not only with the support of his own party (the TPP), but also that of the SDPP (junior coalition partner of the TPP) as well as the 'Nationalist Movement Party' (*Milliyetçi Hareket Partisi* [MHP], a nationalist right-wing party). This last point explains why Demirel did not become a partisan president like Özal.<sup>96</sup> Indeed, before declaring his candidacy, Demirel met the SDPP's leader Erdal İnönü, to sound him out whether the SDPP would lend its support for his Presidency. Cüneyt Arcayürek, a well-known journalist in Turkey, reported that İnönü had promised his Party's support under the condition that Demirel was to remain impartial as President.<sup>97</sup> But even if such bargain had not been made, Demirel probably would have acted as he did because he was the most adamant critic of Özal's presidency. His inauguration speech makes his view about this issue clear:

I will endeavour to succeed in this demanding duty through dialogue, advice, compromise, exchange of views and by being a mediator... the ultimate principle for success in this environment is applying the principle of impartiality.<sup>98</sup>

When one evaluates the whole performance of Demirel in *Çankaya*, one may conclude that he generally kept his promises. It is true that he sometimes strongly disapproved of the moves of Tansu Çiller, who took the seat of Demirel as the

<sup>96</sup> Most people compared Demirel with Özal and predicted that Demirel would adopt the same style of partisan presidency and deliver a similar performance. For discussions in newspapers, see M. Heper and T. Demirel, 'The Press and the Consolidation of Democracy in Turkey', *32 Journal Middle Eastern Studies* (1996) p. 109.

<sup>97</sup> C. Arcayürek, *Çankaya, Gelenler, Gidenler* [Çankaya, Those who are Coming, Those who are Going] 2<sup>nd</sup> edn. (İstanbul, Detay Yayıncılık 2007) p. 312.

<sup>98</sup> 'What Kind of Presidency?', *Turkish Probe*, 18 May 1993, p. 4.

Chair of the TPP and became the first female Prime Minister in Turkish political history, but he never let situations escalate in the way Özal had done. For instance, although TPP members, close to Demirel, occasionally visited him and complained about Çiller, he did not meddle in the internal affairs of the Party.<sup>99</sup>

Yeşim Arat defined Demirel's style of politics during his Presidency as 'moderating' and 'conciliatory'.<sup>100</sup> Although this is generally true, his Presidency, I believe, became a 'guardian presidency', particularly in second half of his term. Particularly the rise of political Islam in Turkey towards the end of his term made him more active in terms of assuming responsibility to protect the central values of the Republic. Here are parallels between Evren and Demirel. The signals of such position can be detected between the lines of inauguration speech: 'it would be a mistake to interpret impartiality as avoiding national and international problems which have a political nature...'<sup>101</sup> In line with this, he took the initiative during the '28 February Process', as we will see.

The result of the parliamentary elections on 24 December 1995 radically changed the political landscape in Turkey. The Islamist 'Welfare Party' (*Refah Partisi* [WP]), led by Necmettin Erbakan, was the victor of the elections. The WP managed to secure the support of 21.38% of the votes cast and gained 158 seats in 550-member Parliament, which was not sufficient to form a government alone. As other political parties distanced themselves from the WP, the latter could not come to power after the elections. An MP-TPP coalition was the only possible combination emerging from the newly-elected Parliament. This coalition, however, proved short-lived. Thus, the road to government was re-opened for the WP and soon Erbakan became the Prime Minister in the WP-TPP coalition in July 1996. During Erbakan's premiership, the anti-secular stance of the WP became visible. Actions of the WP caused deep concern among state elites, particularly among the High Command of the military. At the meeting of the NSC on 28 February 1997, Top Commanders issued an 18-point declaration, asking the WP-led government to take measures to curb the growing Islamist activities.<sup>102</sup> According to many this was a 'soft coup' or, as it was termed by the media at the time, a 'postmodern coup'.<sup>103</sup>

Apparently, Demirel was one of the prominent figures during the so called '28 February Process'. Before the 28 February meeting of the NSC, Demirel wrote

<sup>99</sup> Heper and Çınar, *supra* n. 78, at p. 499.

<sup>100</sup> Y. Arat, 'Süleyman Demirel: National Will and Beyond', in M. Heper and S. Sayarı (eds.), *Political Leaders and Democracy in Turkey* (Lanham, Maryland, Lexington Books 2002) p. 87 at p. 96.

<sup>101</sup> See *supra* n. 98.

<sup>102</sup> See Ü. Cizre and M. Çınar, 'Turkey 2002: Kemalism, Islamism, and Politics in the Light of the February 28 Process', 102 *The South Atlantic Quarterly* (2003) p. 309.

<sup>103</sup> H. Akpınar, 28 Şubat, *Postmodern Darbenin Öyküsü* [28 February, The Tale of a Postmodern Coup] (Ankara, Ümit Yayıncılık 2001).



four letters to Erbakan to warn him about the possible consequences of his anti-secular activities. Particularly in his first letter, he underlined that there had been an extraordinary sensitivity about fundamentalist movements both in society and state institutions. Demirel admonished Erbakan that existing laws should be implemented fully to protect the secular order. It is interesting to note that the content of this letter was very similar to the arguments articulated during a briefing on 17 January 1997 given by the General Staff shortly after Erbakan had invited heads of several militant religious sects to a dinner at his official residence. Demirel repeated his warnings on several occasions until the 28 February meeting of the NSC.<sup>104</sup>

Demirel also played a crucial role in the aftermath, particularly during the formation of the new government. As a result of growing pressure from the military, Erbakan submitted his resignation to Demirel on 18 June 1997. At the same time Erbakan presented a 'joint declaration' to Demirel, signed by the WP, the TPP and the 'Great Unity Party' (*Büyük Birlik Partisi* [GUP], another right-wing nationalist party), according to which this three-party coalition would support Tansu Çiller, on the assumption that she was given the assignment to form the new government. That basically meant that WP-TPP coalition would continue with the transfer of the Prime Ministership from Erbakan to Çiller. However, Demirel refused to do so and appointed Mesut Yılmaz as the new Prime Minister. Article 109 paragraph 2 of the Constitution of 1982, which states that the Prime Minister is appointed by the President of the Republic from among the members of the Assembly, was clearly interpreted by Demirel as giving him a discretionary power to appoint a Prime Minister, as long as the person is a member of Parliament.<sup>105</sup> Thus he contributed to the consummation of the operation of ousting Erbakan and the RP from power. As the Daily newspaper *Sabah* heralded: 'Father Devours the Welfare-Path'.<sup>106</sup>

### *Abmet Necdet Sezer*

Demirel's term of office was to expire on 16 May 2000. In the midst of debates and discussions on his successor, the 'Democratic Left Party' (*Demokratik Sol Parti* [DLP])-NAP-MP coalition Government, led by Bülent Ecevit, proposed an amendment to the Constitution to extend the term of Demirel. Ecevit thought that

<sup>104</sup> S. Ergin, 'Directive Given to the Captain in Sincan: 'Demolish that tent accidentally' [Sincan'da yüzbaşıya verilen emir: 'O çadırı kazayla yık']', *Hürriyet*, 25 Aug. 1997 < <http://webarsiv.hurriyet.com.tr/1997/08/25/6638.asp> > (visited 10 June 2007).

<sup>105</sup> 'Demirel responds to criticism', *Turkish Daily News*, 23 June 1997, p. 1.

<sup>106</sup> 'Welfare-Path' (Refahyol) was the abbreviation for the WP-TPP Coalition, used generally by journalists; Demirel was referred to as father (baba) in popular discourse. 'Refahyol'u Baba Bitirdi', *Sabah*, 21 June 1997, p. 1.

Demirel's presence in *Çankaya* would enhance stability in the country.<sup>107</sup> Nevertheless, in Parliament the amendment failed to win the approval of the majority of deputies. Subsequently, coalition partners began to contemplate several names, who would secure the support of all concerned parties, including the TPP and the Islamist 'Virtue Party' (*Fazilet Partisi* [VP]), successor of the WP. Finally, all parties represented in Parliament reached a consensus on putting Ahmet Necdet Sezer, the President of the Constitutional Court, forward as the President candidate. On 5 May 2000, Sezer was elected as the fourth President under the Constitution of 1982 and he stayed in Office until 16 May 2007.

Sezer was a humble, tight-lipped and serious bureaucrat, maintaining moderate and impartial political stances. With these characteristics, most people thought that he would perform as a President in a classical parliamentary system. Sezer's comments on the powers of the President, which he made after the declaration of his candidacy by the coalition Government, reinforced such expectations. In his speech, delivered at the opening ceremony of the 37<sup>th</sup> anniversary of the formation of Constitutional Court, he underlined that:

The powers given to the President by Article 104 far exceed the limits of a parliamentary democracy. Yet, it is unacceptable for an unaccountable president, from outside Parliament, which represents the will of the nation, to share in running the country and to use special powers by himself.<sup>108</sup>

His seven-year performance, however, fell short of expectations. First, he was the most 'active' president in the Turkish constitutional history in terms of using his constitutional powers: for example, he exercised his veto power 72 times, including in relation to five constitutional amendments<sup>109</sup> and he applied to the Constitutional Court 26 times for the review of the constitutionality of laws, including one constitutional amendment.<sup>110</sup> Second, his term of Presidency was full of crises. The crises during the DLP-NAP-MP coalition Government and during the 'Justice and Development Party' (*Adalet ve Kalkınma Partisi* [AK]) Government will be analysed separately.

<sup>107</sup> 'Ecevit tells Demirel: Stay on at Çankaya', *Turkish Daily News*, 7 Jan. 2000, p. 1.

<sup>108</sup> 'Sezer criticizes the president's power', *Turkish Daily News*, 26 April 2000. For the full text of the speech in Turkish, see *The Official Website of the Constitutional Court of Turkey*: <<http://www.anayasa.gov.tr/general/icerikler.asp?contID=267&menuID=64>>.

<sup>109</sup> B. Bahçeci, *Karşılaştırmalı Hukukta ve Türkiye'de Devlet Başkanının Veto Yetkisi* [President's Veto Power in Comparative Law and in Turkey] (Ankara, Yetkin Yayınları 2008) p. 222-230. Other presidents' number of use of the veto power under the Constitution of 1982 is as follows: Evren (32), Özal (21); Demirel (18). See for Evren: p. 196-200; for Özal: p. 207-209; for Demirel: p. 216-217.

<sup>110</sup> Number of applications made by the other presidents under the 1982 Constitution to the Constitutional Court is as follows: Evren (6); Özal (2); Demirel (4). Source: *The Official Website of the Constitutional Court of Turkey*: <[www.anayasa.gov.tr](http://www.anayasa.gov.tr)> (visited on 2 July 2008).

*Sezer's Presidency during the DLP-NAP-MP coalition Government: A man of values in Çankaya*

Sezer's personal assets were mainly responsible for the crises during the DLP-NAP-MP coalition Government. Sezer was an incorruptible man, in every meaning of the word. He aspired to make the principle of 'honesty', the cardinal maxim of his life, prevalent in the ruling of the country as well. Moreover, he unswervingly believed in the supremacy of law. He committed himself in particular to applying the Constitution uncompromisingly, about which he had vast knowledge as a constitutional judge.

The first controversy between the coalition Government and the President broke out when the Sezer refused to sign a 'law-amending decree',<sup>111</sup> imposing the disciplinary sanction of dismissal for civil servants allegedly involved in fundamentalist or separatist activities.<sup>112</sup> Sezer founded his veto on the reasoning that the Constitution does not allow issuing 'law-amending decrees' in this area. Indeed, the Constitution of 1982 prohibits the regulation of individual rights and liberties (i.e., those in the First and Second Chapter of the Second Part of the Constitution) and political rights and liberties (i.e., those in the Fourth Chapter of the Constitution) through 'law amending decrees', except during the periods of martial law and states of emergency.<sup>113</sup> The legal process of removing civil servants on the basis of disciplinary punishment apparently falls within the scope of Article 38 of the Constitution, titled 'Principles Relating to Offences and Penalties'. As this Article was included in the Second Chapter of the Second Part of the Constitution, it was, according to Sezer, unconstitutional to make such a regulation. Although the Government returned the decree to the President for his approval,<sup>114</sup> Sezer declared on 21 August 2000 that he was not going to sign it.<sup>115</sup> The Government publicly criticised him for stepping outside the limits of his constitutional authority. Furthermore, the members of the tri-partite coalition implicitly accused Sezer of eroding the Government's capacity to fight anti-regime forces.<sup>116</sup>

We may safely argue that Sezer's attitude cannot be explained on ideological grounds. As subsequent developments showed, Sezer was as much concerned as the coalition partners about the protection of republican values. There is no hard

<sup>111</sup> According to Art. 91 of the Constitution: 'The Turkish Grand National Assembly may empower the Council of Ministers to issue decrees having the force of law.'

<sup>112</sup> Law Amending Decree; Date: 12.07.2000; No. 605.

<sup>113</sup> Art. 91.

<sup>114</sup> *Cumhuriyet*, 15 Aug. 2000, p. 5.

<sup>115</sup> *Ibid.*, 22 Aug. 2000, p. 1.

<sup>116</sup> See S. Öngider, *Çankaya'nın Bütün Adamları* [All the Men of Çankaya] (İstanbul, Aykırı Yayıncılık 2006) p. 182.

evidence either that personal animosities between the leading concerning actors have provoked the dispute. The real explanation of Sezer's behaviour, I think, was his belief in the supremacy of the Constitution. He apparently did not hesitate to enter into a struggle which could threaten the political stability in the country, in the name of the rule of law.

A second controversy, triggering not only a political crisis but also one of the worst economic crises in the history of modern Turkey, erupted during a meeting of the NSC. Again Sezer's personal assets, this time his commitment to the principle of honesty, were mainly responsible for this intra-executive controversy during the DLP-NAP-MP coalition Government. It is not exactly clear what happened behind the closed doors of the NSC meeting on 19 February 2001.<sup>117</sup> However, most commentators agree on one point: President Sezer's admonitions concerning irregularities in the banking and energy sectors lit the fire. The signals of the crisis, in fact, became already visible, when Sezer, who thought that the Government had not properly scrutinised corruption cases, decided to charge the 'State Inspection Board' (*Devlet Denetleme Kurulu* [SIB]) officially with the task of investigating those cases.<sup>118</sup> Sezer repeated his criticism at the beginning of the NSC meeting concerning governmental inertia in taking effective measures against corruption. Following a harsh verbal exchange, Prime Minister Ecevit walked out of the NSC meeting, Ecevit then disclosed that this was a 'serious state crisis'. This led to the loss of millions of dollars overnight, causing many people to lose their jobs and inflicting irreparable damage on the Turkish economy with no sign of recovery even in the long run.

These two examples show that Sezer's personality influenced his operating as President. They also show that if a President under the Constitution of 1982 exercises his powers fully, he becomes one of the central actors in the whole political system. Here, we find similarities between Özal and Sezer, who both asserted their constitutional powers boldly. There was, however, a crucial difference between the two: in contrast to Özal, Sezer very carefully observed the constitutional limits. The events also witness the fact that an active president at some point enters into a struggle with the Government and the parliamentary majority, which is grimmer if an ideological element is added to it.

#### *Sezer's Presidency during the AK Party Government*

Sezer continued to collide with the Government in the second part of his Presidency. This intra-executive struggle at the top of the state machinery was a reflec-

<sup>117</sup> *Cumhuriyet*, 20 Feb. 2001, p. 1.

<sup>118</sup> According to Art. 108 of the Constitution the President can initiate the inspection procedure on his own initiative.

tion or replication of the secular-anti-secular opposition, which is currently the principal dividing line in Turkish society. Indeed, the relations between the President and the Government entered into a new stage after 2002 elections, from which the Islamist AK Party emerged as victor. President Sezer took an uncompromising attitude towards the AK Party Government and its parliamentary majority in order to protect republican values, particularly the principle of secularism. This second part of his term leads us to define Sezer's presidency as a 'guardian presidency'. So, President Sezer's open struggle against the AK Party Government may be explained by the rise of political Islam in Turkey.<sup>119</sup>

The early parliamentary elections of 2002 saw 'house cleaning' in Turkish politics. The dissatisfied electorate voted the incumbent DLP-NAP-MP Coalition out and gave no credit to the established political parties, whose performance was generally found to be unsatisfactory and sometimes corrupt. Instead, the overwhelming majority of Turkish people preferred to see a newly-established political party, the Justice and Development Party (AK), in power. The AK Party, in fact, was hardly a 'new' party; its leading cadres were familiar faces in Turkish politics for a long time and most of them were members of political parties following the Islamist 'National Outlook' (*Millî Görüş*) tradition. The '28 February Process', directly targeting political Islam, resulted in a split of the 'National Outlook Tradition'.<sup>120</sup> A reformist faction separated itself from the conservative cadres and founded a new political party, the AK Party, on 14 August 2001. The AK Party swept to power with an unprecedented majority and emerged as the clear victor from the early parliamentary elections of 3 November 2002. The Party won 363 of the 550 seats in Parliament, securing the support of 34.28% of the votes cast.

Although, from its inception, the AK Party leadership took pains to prove that it was a moderate (conservative-democratic) party with center-right disposition, the party cadres were rooted in the Islamist 'National Outlook' tradition. With such a backdrop, the Party has never been trusted by the state elites. The AK Party Government came to loggerheads with several state institutions, including the Presidency. For example, Sezer rejected the appointment of Beşir Atalay, who had allegedly been involved in fundamentalist activities in the past, as education minister. Upon Sezer's resistance, Atalay became the Minister of State, i.e., without

<sup>119</sup> For the application of a center-periphery analysis to present political problems in Turkey, see L. Gönenç, '2000'li Yıllarda Merkez-Çevre İlişkilerini Yeniden Düşünmek' [Rethinking the Center-Periphery Relations in the 2000's] 105 *Toplum ve Bilim* (2006) p. 129.

<sup>120</sup> Some authors argue that, the internal problems in the 'Millî Görüş' movement were responsible for the division between the SP and the JDP. So, the February 28 process played only a catalyst role. See F. Atacan, 'Explaining Religious Politics at the Crossroad: AKP-SP', 6 *Turkish Studies* (2005) p. 187.

portfolio, in the First AK Party Government, led by Abdullah Gül.<sup>121</sup> Later, under the Second AK party Government, Prime Minister Recep Tayyip Erdoğan again wanted to appoint Atalay as education minister during a cabinet reshuffle. Sezer, however, vetoed Atalay for the second time.<sup>122</sup>

Not only the political predisposition of its members, but also the activities of the Government were of concern to Sezer. Whenever he thought bills had the potential of harming republican values, he sent them back to Parliament, particularly those proposed by the Government. He vetoed 55 laws out of 800 during the tenure of AK Party governments.<sup>123</sup> Moreover, Sezer frequently took the side of the military, with the aim of protecting the secular regime, as the controversy over the Prayer Leader and Preacher Schools (*İmam Hatip Okulları* [IHO]) illustrates.

Before the March 2004 local elections, the AK Party Government drafted a bill envisioning equal treatment of graduates from the IHO and graduates from other schools in terms of the impact of their educational score on their total score in the university entrance exam. This practically meant to open the doors of the university to IHO graduates, who had been educated to function as prayer leader or preacher. The military was quick to respond. Top commanders harshly criticised the bill in open statements and articulated their concerns about the possibility of the religious extremists' penetration into universities, which would threaten the secular republic in the long run. Yet the Government got the bill passed by Parliament. This time, the President expressed his uneasiness and vetoed the bill. As tension was rising, the Government decided to shelve the matter.<sup>124</sup>

Sezer was particularly sensitive about the 'headscarf issue' and he did not tolerate headscarf in the public realm. He was even very careful not to stand side by side with Government members and deputies who adopted an Islamic lifestyle. He did not send invitations to the wives of AK Party deputies who wore headscarves, to the 29 October, Republic Day reception at Çankaya Presidential Palace,<sup>125</sup> nor did he accept their invitations.<sup>126</sup>

<sup>121</sup> 'Gül Admits Cabinet Changes, Says No Friction', *Turkish Daily News*, 20 Nov. 2002, searchable through <[www.turkishdailynews.com.tr](http://www.turkishdailynews.com.tr)> (visited 12 Feb. 2008).

<sup>122</sup> 'Sezer's Double Atalay Veto', *Turkish Daily News*, 23 Feb. 2005, searchable through <[www.turkishdailynews.com.tr](http://www.turkishdailynews.com.tr)> (visited 12 Feb. 2008).

<sup>123</sup> İ. Demirdöğen, 'Sezer'li 7 Yıl (7)' [Seven Years with Sezer (7)], *Radikal*, 28 April 2007, searchable through <[www.radikal.com.tr](http://www.radikal.com.tr)> (visited 12 Feb. 2008).

<sup>124</sup> For more information, see M. Heper, 'The Justice and Development Party Government and the Military in Turkey', 6 *Turkish Studies* (2005) p. 215 at p. 225-226.

<sup>125</sup> 'Republic marks its 80th anniversary', *Turkish Daily News*, 30 Oct. 2003, searchable through <[www.turkishdailynews.com.tr](http://www.turkishdailynews.com.tr)> (visited 12 Feb. 2008).

<sup>126</sup> He did not attend the wedding ceremony of Erdoğan's son, although he had been invited. İ. Demirdöğen, 'Sezer'li 7 Yıl (5)' [Seven Years with Sezer (5)], *Radikal*, 26 April 2007, searchable through <[www.radikal.com.tr](http://www.radikal.com.tr)> (visited 12 Feb. 2008).

When we draw up the balance of the second part of the Sezer era, we find similarities between his Presidency and that of Demirel. Political environmental factors made the President ideologically more active in both cases, and both Demirel and Sezer assumed the role of the 'guardian president' in the face of growing political Islam. Maybe Sezer was more radical than Demirel, yet this is explainable: given the fact that the AK Party had more popular support than other Islamist political parties previously, it was perceived as a more serious threat by the President as well as by other state elites.

### THE SYMBOLIC MEANING OF THE PRESIDENCY: THE LAST BASTION OF SECULARISM

The battle over the succession of Sezer began months before the expiration of Sezer's term. A candidate from the AK Party, in fact, had the greatest chance to become President, given the fact that the Party held the majority in Parliament. Although the number of the AK Party deputies was below the constitutionally required majority for the election of the President in the two first rounds, the AK Party would ultimately be able to elect its candidate in the third round.<sup>127</sup> While it was almost certain that the next president was going to come from the AK Party, it was not clear who was going to be the candidate. There was intense speculation that Prime Minister Recep Tayyip Erdoğan would announce his candidacy.<sup>128</sup>

The AK Party's aspirations for the Presidency, not surprisingly, provoked a strong reaction from the secular forces in the country. As the deadline for the announcement of presidential candidates was approaching, the tension between state elites and the AK Party reached its peak. The military began to articulate its unrest more vociferously than ever. During a press conference on 12 April 2007, ostensibly arranged for informing the public about certain military issues, the Chief of General Staff Yaşar Büyükanıt commented that the armed forces hoped that the next president would be somebody who would commit himself to the basic values of the republic, including secularism, not only in words, but also in sub-

<sup>127</sup> According to Art. 102 of the Constitution the President is elected by a two-thirds majority of the total number of members of Assembly. If a two-thirds majority cannot be obtained in the first two ballots, a third ballot is held and the candidate who receives the absolute majority of votes of the total number of members is elected President. If an absolute majority of votes of the total number of members is not obtained in the third ballot, a fourth ballot is held between the two candidates who receive the greatest number of votes in the third ballot; if the President cannot be elected by an absolute majority of the total number of members in this ballot, new general elections for the Assembly are held immediately.

<sup>128</sup> For the political background of these developments, see S. Kaplan, *Recep Tayyip Erdoğan, Geleceği Etkileyecek Siyasi Liderler...* [Recep Tayyip Erdoğan, Political Leader who will Shape the Future...] (İstanbul, Doğan Kitap 2007), p. 100-142.

stance.<sup>129</sup> Through such an indirect message – addressing the AK Party in general and Erdoğan in particular – the top commanders made it clear that they would not remain silent if somebody from the AK Party, particularly Recep Tayyip Erdoğan, would be elected president. With harsh criticisms, the outgoing President Sezer joined the military. Sezer spoke in an official ceremony, held in the War Academy, the following day (13 April 2007). By referring to anti-secular forces, he pointed out that the ‘secular order’ in Turkey encountered the most serious threat since the foundation of the Republic in 1923.<sup>130</sup> Mass protests, organised in major cities of Turkey with the participation of secularist civil society organisations and with support of the main opposition party RPP completed the picture.

Most likely because of these strong reactions of the secular forces, Recep Tayyip Erdoğan on 24 April 2007 put forward not himself, but Abdullah Gül, one of the founding members of the AK Party and Foreign Minister in the AK Party Government at the time, as the AK Party’s candidate for the Presidency.<sup>131</sup> This manoeuvre, however, did not placate secular forces: Gül’s candidacy stirred up as much opposition as Erdoğan’s candidacy would have done. Gül’s ties with the Islamist ‘National Outlook Movement’, his negative comments on the principle of secularism in the past, and his headscarved wife<sup>132</sup> were cited as evidence for Gül’s anti-secular stance. Representatives of the secular forces underlined that the Presidency was the ‘last bastion of secularism’ and could not be handed over to anti-secular forces. Despite these reactions, the AK Party maintained the candidacy of Gül. In the first round of the presidential election on 27 April 2007 he could not muster the support of the qualified majority of deputies (the Article 102 of the Constitution).<sup>133</sup>

Immediately after this first round, the main opposition party RPP, which had boycotted the balloting in the Assembly, applied to the Constitutional Court for the annulment of the ballot. According to the RPP, the required quorum had not been present. Article 96 of the Constitution states that the Assembly convenes

<sup>129</sup> *Cumhuriyet*, 13 April 2007, p. 1.

<sup>130</sup> *Ibid.*, 14 April 2007, p. 1.

<sup>131</sup> *Ibid.*, 25 April 2007, p. 1.

<sup>132</sup> Before she becoming the ‘first lady’, Abdullah Gül’s wife Hayrünisa Gül had been known publicly because of her application to the ‘European Court of Human Rights’ (ECHR). Although she had succeeded the university entrance exam, her registration had not been made by the university, on the ground that one could not attend higher education institutions with a headscarf. Upon the rejection of her case by Danıştay (the Council of State in Turkey), Ms. Gül brought the case before the ECHR. She, however, withdrew her application following the appointment of Abdullah Gül as the foreign minister in 2003. See D. Güvenç, ‘Profile of a Prospective First Lady and the President’, *Turkish Daily News*, 25 April 2007, searchable through <[www.turkishdailynews.com.tr](http://www.turkishdailynews.com.tr)> (visited 12 Feb. 2008).

<sup>133</sup> *Cumhuriyet*, 28 April 2007, p. 1.



with at least one third of the total number of members, unless otherwise stipulated in the Constitution. In view of the RPP, the election of the President constitutes one of the exceptions. And as the Constitution stipulates that ‘The President of the Republic shall be elected by a two-thirds majority of the total number of members of the Assembly’, that logically implies that a two-thirds majority of the total number of the members of Assembly must be present in the presidential election session. As only 361 of 550 MPs were present in the first round of the presidential election, the ballot should be annulled.<sup>134</sup>

On the day when the first round of presidential election was held, another significant event occurred. The military issued a statement at midnight – an ‘ memorandum’ according to many – on the ‘Official Website of the Office of the Chief of the General Staff. With particular reference to the debates in the process of the election of the president, the top commanders stated that:

It should not be forgotten that the Turkish armed forces are a side in this debate and are a staunch defender of secularism... The Turkish armed forces are against those debates ... and will display their position and attitudes when it becomes necessary. No one should doubt that...<sup>135</sup>

Thus, two powerful veto players, the military and the Constitutional Court stepped in the process. With the Court’s ruling on 1 May 2007, in which it put the RPP in the right, it became apparent that the alliance of veto players would strongly resist to the change in the status quo, within the context of the presidential elections.<sup>136</sup>

I summarise the events after Constitutional Court’s decision. On 6 May 2007, the Assembly failed to convene for electing the President, because it could not muster the newly-prescribed quorum by the Constitutional Court. Then, Abdullah Gül withdrew his candidacy. In response, the AK Party called for early elections, which were scheduled by the High Electoral Commission for 22 July 2007. Moreover, the AK Party proposed a package of constitutional amendments, consisting of the introduction of the popular election of the president, the reduction of the President’s term to 5 years with the possibility of one re-election, the reduction of Parliament’s term from 5 to 4 years and a clarification of the quorum of the Assembly. The Assembly passed all the amendments on 7 May 2007. President Sezer returned them to the Assembly on 25 May 2007, but they were readopted on 1 July 2007. On 18 June 2007, Sezer signed the amendments for publication in the

<sup>134</sup> For details and background developments, see E. Özbudun, ‘Why the Crisis Over the Presidency?’, 12 *Private View* (2007), p. 48.

<sup>135</sup> ‘Military Issues Harsh Warning over Secularism’, *Turkish Daily News*, 28 April 2007, searchable through <[www.turkishdailynews.com.tr](http://www.turkishdailynews.com.tr)> (visited 12 Feb. 2008).

<sup>136</sup> Decision of the Constitutional Court, dated 01.05.2007; E. 2007/45; K. 2007/54.

Official Gazette and in accordance with Article 175 submitted them to a referendum.<sup>137</sup> He also applied to the Constitutional Court for annulment of the package, yet the Court, this time, rejected his application on 5 July 2007.<sup>138</sup> The amendments were approved by a referendum on 21 October 2007.

In the meantime, early general elections were held on 22 July 2007. Although opinion polls predicted that the AK Party would win, few expected such impressive victory: the AK Party managed to secure the support of 46.5% of the votes cast and gained 341 seats in the 550 member Parliament.

In the newly elected Parliament, the debate about election of the President resumed where it left off. This time, however, the AK Party was politically more powerful than it had been before. On 14 August 2007, Abdullah Gül re-declared his candidacy.<sup>139</sup> The RPP again did not attend the session. Nevertheless, other political parties in the Assembly (specifically, the NAP, DLP and the pro-Kurdish 'Democratic Turkey Party' (*Demokratik Türkiye Partisi* [DTP]), were present. Thus, the Assembly was able to attain the required two-thirds majority to convene. Consequently, on 28 August 2007, Gül was elected as the 11<sup>th</sup> President of Turkey with 330 votes of the deputies in the third round.<sup>140</sup>

## TO CONCLUDE

In the Turkish parliamentary government system, the presidents appear stronger and more active than presidents in classical parliamentary systems. Not only the presidents' expanded constitutional powers, but also such extra-constitutional factors as political-cultural dynamics, progress of events and personalities of presidents contributed to the strength and activeness of the presidents. Moreover, relations between (active and strong) presidents with governments and parliamentary majorities were always tense.

With the 2007 amendments, Turkey made a transition from a parliamentary system of government to semi-presidentialism,<sup>141</sup> if we define the semi-presidential government as '... the situation where a popularly elected fixed-term president exists alongside a prime minister and cabinet who are responsible to

<sup>137</sup> Para. 3 of Art. 175 is as follows: 'The President of the Republic may refer the laws related to the Constitutional amendments for further consideration. If the Assembly adopts the draft law referred by the President by a two-thirds majority, the President may submit the law to referendum.'

<sup>138</sup> Decision of the Constitutional Court, dated 05.07.2007; E. 2007/72; K. 2007/68.

<sup>139</sup> *Cumhuriyet*, 15 Aug. 2007, p. 1.

<sup>140</sup> *Ibid.*, 29 Aug. 2007, p. 1.

<sup>141</sup> The time of the next presidential election is subject to heated discussions. As the term of the President was reduced to 5 years, some argue that Abdullah Gül's term ends in 2012. Others point out that Gül was elected when the term of the President was still 7 years; in this line of thought the next presidential election should be held in 2014.

parliament.<sup>142</sup> Debates about governmental system change were not new in Turkey. During the application of the Constitution of 1982, first Turgut Özal (both in his prime ministry and presidency), then Süleyman Demirel, maintained that the governmental system in Turkey needed to be revised and the adoption of presidential or semi-presidential system would serve such need. Özal's and Demirel's proposals were well-received among political and academic circles and a transition from the parliamentary system to a presidential or semi-presidential system was discussed on several occasions. This idea was also revived during the AK Party Government's tenure; Erdoğan himself and other top-level party members occasionally mentioned that the (semi-) presidential system would be the most suitable for Turkey.<sup>143</sup>

One argument was especially used in favour of the (semi-) presidential system: Turkey's growing and pressing problems require an 'effective executive', which would take necessary decisions swiftly and apply them efficaciously. The defenders of the semi-presidential (or presidential) system argued that the president in such systems fits this requirement. An extensive discussion of whether these arguments are valid falls outside the scope of this article. However, I think, it suffices to note that the 2007 constitutional amendments were not the consequences of these discussions. In other words, the adoption of the principle of popular election of the president was not part of a well thought-out and well-designed constitutional engineering scheme; rather, it was a reaction to an escalating crisis concerning the election of the President by Parliament. Accordingly, it would be misleading to make any connection between the logic of previous discussions and the motives of recent governmental system change. This being so, I think, one must conclude that these amendments lack any rational ground that could justify the introduction of the popular election of the President. From this perspective, one may argue that this governmental system could create serious problems in the future. Most importantly, semi-presidential systems harbour the seeds of instability. Indeed, during 'cohabitation' periods (i.e., periods in which the President and the parliamentary majority are from antagonistic political parties or subscribe to different worldviews), there is always a risk of confrontation between these actors. The dualist nature of semi-presidential regimes may provoke competition and struggle between the President and the Prime Minister, even if they are mem-

<sup>142</sup> R. Elgie, 'The Politics of Semi-Presidentialism', in R. Elgie (ed.), *Semi-Presidentialism in Europe* (Oxford, Oxford University Press 1999) p. 1 at p. 13.

<sup>143</sup> For these discussions, see B.E. Oder, 'Türkiye'de Başkanlık ve Yarı Başkanlık Rejimi Tartışmaları: 1991-2005 Yılları Arasında Basına Yansıyan Öneri ve Tepkilerden Kesitler' [Debates on Presidentialism and Semi-Presidentialism in Turkey: Proposals and Criticisms as Reflected in Newspapers Between 1991-2005], in T. Ergül (ed.), *Başkanlık Sistemi* [Presidential System] (Ankara, Turkish Bar Association Publications 2005), p. 31.

bers of the same party. In view of the Turkish experience, the picture is not rosy. In fact, since the Turkish president holds more powers than a classical parliamentary president does, Turkey experienced ‘cohabitation-like’ situations in the past. Both ‘partisan’ and ‘guardian’ presidents confronted the parliamentary majority and the Prime Minister, backed by the latter, as has been seen in the cases of ‘Özal vs. Evren’; ‘Demirel vs. Özal’; ‘Erdoğan vs. Sezer’. Even those periods in which the President and the Prime Minister were from the same party (Yılmaz vs. Özal) or shared the same world view (Ecevit vs. Sezer), saw implacable struggles between these actors. Needless to say, the principle of popular election of the President could exacerbate the situation in the long run.

