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**THE EMERGENCE OF HYPER-PRESIDENTIALISM:
A STUDY ON POLITICAL OPPOSITION IN
TURKEY’S NEW PRESIDENTIAL SYSTEM**

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INTRODUCTION

A political opposition inside and outside of parliament is an essential component of a well-functioning democracy¹. According to Dahl, opposition is also an indispensable element within the democratic representation framework. Among the three pivotal landmarks in the evolution of democratic institutions, namely the right to participate in governance through the act of voting, the right to be represented, and the right of an organized opposition to appeal for electoral support and challenge the government's policies within both the electoral and parliamentary arenas, the latter is a relatively recent addition, attaining its highest degree of sophistication in modern times². Accordingly, Dahl has shown that one of the two main characteristics of polyarchy is opposition along with participation³. Opposition, which is indispensable for democracy, is essentially a parliamentary system concept, but it is also important for other political systems.

Accordingly, while policy debates revolve around government-opposition relations in parliamentary systems, in the United States, which serves as the archetype of the presidential system, they often turn on the dynamics between the executive and legislative branches. However, in the United States, the two-party system, which lacks party discipline, provides a mechanism for maintaining checks and balances between these institutions, whereas a different situation emerges in multi-party presidential systems. In their study of Latin American presidential systems, Morgenstern, Negri, and Pérez-Liñán have demonstrated that executive-legislative relations are equally significant as executive-opposition relations⁴.

Beyond the multi-party systems, there exist presidential systems that exhibit distinctive differences from the archetype United States presidential system. Unlike the United States, certain presidential systems intentionally weaken the checks and balances mechanisms, thereby striving to consolidate power within the executive branch. In these systems, which have been called hyper-presidential⁵ systems, various regulations are

¹ Council of Europe Parliamentary Assembly, Resolution 1601 (2008) on Procedural Guidelines on Rights and Responsibilities of Opposition in a Democratic Parliament (Adopted by the Assembly on 23 January 2008 at the 6th sitting), 1.

² Robert A. Dahl, "Preface," in *Political Opposition in Western Democracies*, ed. Robert Dahl (New Haven and London: Yale University Press, 1966), xiii.

³ Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven and London: Yale University Press, 1971).

⁴ Scott Morgenstern, Juan Javier Negri and Aníbal Pérez-Liñán, "Parliamentary Opposition in Non-Parliamentary Regimes: Latin America," *The Journal of Legislative Studies* 14, no. 1-2 (2008).

⁵ Christopher Larkins, *The Legacies of Hyper-Presidentialism: Executive-Judicial Relations, Constitutional Cultures, and the Future of Democratic Governance in Argentina and Peru*, PhD. Diss., (University of Southern California, 1998); Susan Rose-Ackerman, Diane A. Desierto and Natalia Volosin, "Hyper-

implemented with the aim of strengthening the executive and significantly limiting the oversight of the executive. Notably, the question of relying on the entire legislative branch to check the executive, especially when the executive holds a majority in the parliament, becomes a subject of debate.

Consequently, in presidential systems with a multi-party system, and particularly if the political parties have a disciplined party system, the ability of the legislature to oversee the executive is hindered. In this context, there is a pressing need to investigate the role of the opposition as a checks and balances mechanism.

Political opposition is not solely confined to political parties that do not have a majority within the parliament. Beyond the parliament, civil society organizations and other segments of society with dissident characters who oppose and seek to obstruct the policies of the executive branch are also integral components of political opposition. Civil dissent plays a significant role in overseeing the executive. By shedding light on the desires and issues within societies, civil dissent directs attention to these matters, encourages the emergence of various viewpoints, and paves the way for discussions in these areas⁶.

In 2017, a constitutional amendment that altered the political system was approved through a referendum in Turkey. This change, which redefined Turkey's political framework, also significantly impacted the checks and balances system. Particularly noteworthy is the design of a presidential system conjoined with multipartism, which overly strengthens the president and weakens checks and balances. This system also ensures the parliamentary majority's alignment with the president, which necessitates an examination of political opposition as a mechanism of balance.

The introduction of the political system following the 2017 constitutional amendment has garnered significant attention in academia. Scholars have delved into the mechanisms of checks and balances among the branches, examined the interactions between the legislative and executive branches in line with the principle of the separation of powers, and investigated the responsibilities of the president. These studies primarily indicate that the power of the president has excessively increased, and the legislature lacks sufficient means to balance this excess.

The ongoing debates have polarized opinions, with some believing that with the structure in which legitimacy is directly derived from the electorate through presidential

Presidentialism: Separation of Powers without Checks and Balances in Argentina and the Philippines," *Berkeley Journal of International Law* 29 (2011).

⁶ Nükhet Yılmaz Turgut, *Siyasal Muhalefet* (Ankara: İmaj, 2014).

elections, Turkey will move away from being a focal point for anti-democratic interventions and become one of the central hubs for democratic institutionalization⁷, while others contend it will pave the way for an authoritarian regime⁸.

Notably, there is a lack of studies on the role of the opposition within this system, especially those that examine parliamentary opposition and civil dissent together. The focus of this study can be explained by the fact that, in this system, the president, with a friendly majority supporting them in the parliament, can single-handedly control both the executive and legislative branches. By directly and personally appointing ministers and the members of the ruling party in parliament, they can make all significant decisions related to both branches without any checks and balances within these branches. Hence, the necessity of an opposition capable of overseeing the executive becomes paramount. Consequently, understanding the position of parliamentary opposition within the system and the impact of constitutional changes on the opposition are critical questions. Therefore, this study aims to illustrate whether Turkey's 2017 constitutional amendments have hindered the opposition's capacity to control the executive while simultaneously augmenting the president's power. It also seeks to evaluate whether these endeavors have culminated in the establishment of a hyper-presidential system.

Chapter 1 provides an examination of the theory of hyper-presidentialism while analyzing the presidential system in its traditional sense, in which the United States provides the archetype. It also examines the evolution of hyper-presidentialism in the land of presidentialism, which is Latin America. Chapter 2 presents a historical backdrop, tracing the evolution of Turkey's political scene from its roots to recent years. The 2007 constitutional amendment and the discussions surrounding the system transition have been discussed in this framework. Chapter 3 examines the challenges the parliamentary opposition faces by analyzing the factors contributing to ensuring a friendly majority for the president. These include electoral legislation, the political party system, and the use of state resources and media during election periods. Furthermore, the chapter examined the information and oversight mechanisms that are vital to ensuring a healthy democratic process. Lastly, Chapter 4 sheds light on civil dissent by analyzing the permanent state of emergency, repression of civil society, and legal regulations and policies used to suppress the press, academia, and lawyers. This extensive analysis tries to present insights into the

⁷ Gonca Bayraktar Durgun, "Anayasa Referandumunu ve Cumhurbaşkanlığı Hükümet Sistemi," *Yeni Türkiye* 94 (2017).

⁸ Berk Esen and Şebnem Gümüşçü, "A Small Yes for Presidentialism: The Turkish Constitutional Referendum of April 2017," *South European Society and Politics* 22, no. 3. (2017). <http://doi.org/10.1080/13608746.2017.1384341>.

interaction between the executive, opposition, and political rights in Turkey's changing political landscape under the concept of hyper-presidentialism.

CHAPTER 1

1 THEORY OF HYPER-PRESIDENTIALISM

One needs to examine hyper-presidentialism, which diverts sharply from the pure (traditional) presidential system, to understand the political system in Turkey. Hyper-presidentialism concentrates unprecedented extreme power over the executive by moving away from the separation of powers through its rhetoric. However, while the traditional system emphasizes checks and balances, hyper-presidentialism ignores this mechanism⁹.

The literature shows that presidents often push the boundaries of their authority to gain more power¹⁰. In doing so, they may circumvent the mechanisms that were designed to avoid a concentration of power in one branch. As Rose-Ackerman and others have noted, these hyper-presidents use the concept of separation of powers to distort the balance of power while at the same time undermining or eliminating checks and balances¹¹.

1.1 Understanding Presidentialism and Hyper-Presidentialism

1.1.1 Definition and Characteristics of Presidentialism

Several institutional and constitutional aspects are examined while analyzing political systems, serving as the cornerstone for their classification. This analysis encompasses the structure of the executive and legislative branches, their authority, and their relationship with each other. Based on the findings of this analysis, the most typical systems are presidential, parliamentary, or semi-presidential.

In presidentialism, executive authority is vested in a single individual. Conversely, parliamentary systems allocate government formation to the legislative majority. A third model, semi-presidentialism, merges aspects of both. Definitions of these systems vary among scholars, each striving to identify the core attributes that epitomize their respective systems¹².

Arendt Lijphart claims that two conditions are crucial for presidentialism. According to Lijphart, these two vital conditions are that the chief executive should not rely on legislative confidence but should serve for a fixed term and should be elected

⁹ Rose-Ackerman, Desierto and Volosin, "Hyper-Presidentialism," 247.

¹⁰ Juan J. Linz, "The Perils of Presidentialism," *Journal of Democracy* 1, no. 1 (Winter 1990); Rose-Ackerman, Desierto and Volosin, "Hyper-Presidentialism".

¹¹ Rose-Ackerman, Desierto and Volosin, "Hyper-Presidentialism," 246-249.

¹² Şule Özsoy Boyunsuz, "The AKP's Proposal for a "Turkish Type of Presidentialism" in Comparative Context," *Turkish Studies* 17, no. 1 (2016): 4-5. <https://doi.org/10.1080/14683849.2015.1135064>.

through a popular vote. Subsequently, Lijphart highlights another requirement that he considers crucial to presidentialism: the presence of a one-person executive¹³.

In line with Lijphart's view, Juan Linz posits that for a political system to be classified as presidential, it must fulfill specific fundamental prerequisites. These prerequisites encompass an executive vested with significant constitutional powers, typically with complete authority over the formation of their cabinet and administrative staff. Furthermore, the executive leader is directly elected by the people for a fixed term, which makes them independent of a vote of no confidence by democratically elected parliamentary representatives. Notably, the chief executive assumes not only the role of executive power but also serves as the symbolic representative of the state, and their removal from office is only admissible in extraordinary circumstances such as impeachment¹⁴.

Giovanni Sartori outlines the primary characteristic of presidentialism as the direct or direct-like popular election of the head of state for a fixed term. Additionally, in such systems, the government or executive is not determined by a parliamentary vote. The president possesses the power to appoint and remove cabinet members. Lastly, genuine presidentialism prohibits any form of dual authority between the president and the cabinet. The president exercises full control over the executive branch and retains ultimate power¹⁵.

Shugart and Carey highlight the importance of distinguishing the origin and continuity of the executive and assembly as a key aspect of presidentialism. They assert that presidentialism is characterized by the direct election of the chief executive by the people, fixed terms for both the chief executive and assembly members, and the elected executive's power to appoint and oversee the government's composition. Furthermore, they contend that it is crucial to grant presidents certain constitutionally authorized legislative powers to effectively implement the policy agenda supported by the presidential election into tangible policy outcomes¹⁶.

Accordingly, the separation of powers is central to presidentialism. Nonetheless, the role of checks and balances is just as significant in the archetype of US

¹³ Matthew Soberg Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1997), 20.

¹⁴ Juan J. Linz, "Democracy: Presidential or Parliamentary Does it Make a Difference?" Paper prepared for the project, "The Role of Political Parties in the Return to Democracy in the Southern Cone," sponsored by the Latin American Program of the Woodrow Wilson International Center for Scholars, and the World Peace Foundation (July 1985), 3.

¹⁵ Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (Houndmills, Basingstoke, Hampshire and London: Macmillan, 1994), 83-4.

¹⁶ Shugart and Carey, *Presidents and Assemblies*, 19.

presidentialism. Contrarily, in hyper-presidentialism, it is a pattern where the executives intentionally try to undermine the checks and balances but glorify the separation of powers. According to the conventional view, state authority should be split into three distinct functions: the legislative branch, which creates laws; the executive branch, which implements laws; and the judiciary, which interprets laws and resolves disputes when they arise¹⁷.

Rose-Ackerman et. al. examine two different theories relating to the separation of powers. According to one theory, advocates for the division and specialization of labor, with each branch having a certain role that cannot exceed its authority¹⁸. The second theory, which is based on the principles of the US founding fathers, emphasized the personal separation of powers among branches and functions as opposed to social classes¹⁹. One of the founding fathers, James Madison, stressed the need for separation of powers and cautioned against the tyranny that would result from concentrating the power of the legislative, executive, and judicial branches in the hands of one person or small group²⁰. Merely defining the boundaries of power is not enough; there needs to be a separation of powers and the creation of a structure in which each branch has some degree of control over the others. Therefore, as important as it is to establish the specific jurisdiction of each branch, it is equally essential to create a system of checks and balances where each branch can monitor and control the acts of others²¹. Thus, a comprehensive understanding of the modern concept of the separation of powers necessitates the incorporation of the theory of checks and balances²².

¹⁷ M. J. C. Vile, *Constitutionalism and the Separation of Powers*, 2nd ed. (Indianapolis: Liberty Fund, 1998), 15-19; Ergun Özbudun, *Türk Anayasa Hukuku*, 18th ed. (Ankara: Yetkin, 2018), 190-191.

¹⁸ Rose-Ackerman, Desierto and Volosin, "Hyper-Presidentialism," 247.

¹⁹ While Montesquieu is often credited with popularizing the concept of separation of powers, its origins can be traced back to earlier thinkers such as Aristotle, Polybius, Cicero, St. Thomas Aquinas, and Locke. These intellectuals, advocates of a mixed regime that incorporated elements of monarchy, aristocracy, and democracy, believed in the partial division of state authority. Consequently, they proposed a system where governance was distributed among "the one", "the few", and "the many". This model envisioned a monarchy led by a single ruler, elite councils representing a small segment of society, and popular assemblies composed of the general populace responsible for managing state affairs. See. Steven G. Calabresi, Mark E. Berghausen, and Skylar Albertson, "The Rise and Fall of the Separation of Powers," *Northwestern University Law Review* 106, no. 2 (2012): 527-550, 528-536.

²⁰ James Madison, "Federalist No. 47," *Library of Congress*, <https://guides.loc.gov/federalist-papers/text-41-50#s-lg-box-wrapper-25493412>.

²¹ András Sajó, *Limiting Government: An Introduction to Constitutionalism* (Budapest: Central European University Press, 1999), 69.

²² M. J. C. Vile, *Constitutionalism and the Separation of Powers*, 19-20.

1.1.2 Evolution to Hyper-Presidentialism

The presidential constitution of the United States of America, adopted in 1787 and still in force, is considered quite exceptional among presidential systems worldwide²³. Its endurance and influence have transcended the borders, especially into Latin America, historically recognized as the “land of presidentialism²⁴”. The impact of the US model is clear in this region, where extensive research has been conducted due to the prevalence of these systems. Although Latin American constitutions are influenced by the United States, they differ from it in several ways and are shaped by its own unique realities and conditions. Following the decline of Spanish colonial rule, Latin America faced the challenge of replacing absolute monarchy²⁵. Rather than choosing between a presidential or parliamentary system, the region faced a choice between a monarchy and a republic²⁶.

While the preference for a presidential system in the United States emphasized the checks and balances of the founding fathers to prevent tyranny, the expectation of a strong presidency has come to the fore in the debates in Latin America²⁷. During this time, prominent figures like Simon Bolivar were instrumental in shaping a number of constitutional proposals that aimed to establish strong presidential authority, which was seen by Bolivar as the key to ensuring the independence of Latin America’s developing nations²⁸. During the 1980s, a constitution-making process was reintroduced to restrain the authoritarian governments established by the earlier constitutions. Nevertheless, in the end, the framers of the constitutions put short-term objectives - namely, ensuring the reelection of sitting presidents - ahead of long-term democratic ideals²⁹.

Over two centuries since their founding, countries in Latin America have diverged from the US model due to factors such as ineffective checks and balances, the expansion of presidential power, democratic deficits, multi-party structures, and socioeconomic

²³ Fred W. Riggs, “The Survival of Presidentialism in America: Para-Constitutional Practices,” *International Political Science Review* 9 (1988); Juan J. Linz, “The Virtues of Parliamentarism,” *Journal of Democracy* 1, no. 4 (Fall 1990). <https://doi.org/10.1353/jod.1990.0059>.

²⁴ José Antonio Cheibub, Zachary Elkins, Tom Ginsburg, “Still the Land of Presidentialism? Executives and the Latin American Constitution,” in *New Constitutionalism in Latin America: Promises and Practices*, ed. Detlef Nolte and Almut Schilling-Vacaflor (Surrey and Burlington: Ashgate, 2016).

²⁵ Şule Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri: Karşılaştırmalı Bir Analiz* (Ankara: İmge, 2017), 83.

²⁶ José Antonio Cheibub, *Presidentialism, Parliamentarism and Democracy* (Cambridge: Cambridge University Press, 2007), 151-152.

²⁷ Rett R. Ludwikowski, “Latin American Hybrid Constitutionalism: The United States Presidentialism in the Civil Law Melting Pot,” *Boston University International Law Journal* 21, no. 1 (2003): 51-52.

²⁸ Roberto Gargarella, “Latin American Constitutionalism Then and Now: Promises and Questions,” in *New Constitutionalism in Latin America: Promises and Practices*, ed. Detlef Nolte, Almut Schilling-Vacaflor (Surrey and Burlington: Ashgate, 2016), 144; Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 85.

²⁹ Rose-Ackerman, Desierto and Volosin, “Hyper-Presidentialism,” 247; Gargarella, “Latin American Constitutionalism Then and Now,” 152.

factors. This divergence has culminated in the development of hyper-presidentialism, characterized by an excess of presidential power and frequently coupled with authoritarian tendencies³⁰.

1.2 Theoretical Framework

In the early 1990s, Carlos Santiago Nino coined the term “hyper-presidentialism³¹”, suggesting that countries such as Argentina had political systems that went beyond being simply presidential, like the United States. This extreme form of presidentialism³² “*aggravated dysfunctionalities associated with presidential systems*”³³. In his article, Nino argues that the phenomenon of hyper-presidentialism in Latin American countries stems from the consolidation of power within the executive branch, which is further fortified by constitutional stipulations and practices. As a consequence, these countries have witnessed a series of political crises, a decline in public support for their presidents, and institutional instability. Hyper-presidentialism is widely acknowledged as a pivotal element contributing to the dysfunction of presidential systems within the region³⁴.

Nino further asserted that the hyper-presidentialism of the Argentine political system undermines the rule of law and democratic processes. He posits that constitutional reforms should focus on neutralizing hyper-presidentialism in order to strengthen democratic institutions and improve the moral quality of the democratic system³⁵.

Similarly, Russia and the Weimar Republic are also analyzed under the concept of “superpresidentialism”. Fish, for instance, discusses the concept of superpresidentialism³⁶, particularly in the context of the Russian political system. He refers to a constitutional order where the president possesses extensive powers while the legislature is relatively weak. In Russia, the president has the authority to legislate by decree, determine the government’s composition, and shield the executive branch from parliamentary scrutiny. Additionally, the president oversees a large bureaucratic apparatus. Fish suggests that superpresidentialism is not exclusive to Russia and can be

³⁰ Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 84.

³¹ Carlos Santiago Nino, “The Debate Over Constitutional Reform in Latin America,” *Fordham International Law Journal* 16, no. 3 (1992).

³² Nino, “The Debate Over Constitutional Reform in Latin America,” 640.

³³ Nino, “The Debate Over Constitutional Reform in Latin America,” p. 641.

³⁴ Nino, “The Debate Over Constitutional Reform in Latin America”.

³⁵ Carlos Santiago Nino, “Hyperpresidentialism and Constitutional Reform in Argentina,” in *Institutional Design in New Democracies*, ed. Arendt Lijphart and Carlos H. Waisman (London and New York: Routledge, 1996).

³⁶ . Steven Fish, “The Pitfalls of Russian Superpresidentialism,” *Current History* 96, no. 612 (1997).

found in other post-Soviet countries and regions, like Latin America. Even though Fish sees superpresidentialism as a democratic system, he argues that it presents several challenges to democracy. Since power is concentrated in one individual, the president's competence, judgment, and health become crucial factors. Any lapse in the president's leadership creates a power vacuum. Superpresidentialism also tends to foster winner-take-all politics, potentially leading to extraconstitutional actions by political forces. Presidential elections become highly consequential, encouraging cheating and illegal behavior by contenders and their supporters. Evidently, the term broadly encompasses hyper-presidentialism, as will be analyzed in the subsequent paragraphs, and relates to examples of hyper-presidential systems in Latin America, as suggested by Fish. What these systems have in common is that the presidents have extensive powers and checks and balances are weakened.

This viewpoint resonates with Guillermo O'Donnell's thorough analysis of the concept of delegative democracy. O'Donnell extensively examined this concept and elaborated on its distinctive characteristics within the realm of political discourse³⁷. According to O'Donnell, delegative democracies are built on the fundamental notion that the elected presidents possess the authority to govern as they see fit, though constrained by existing power relations and constitutional term limitations³⁸. In this context, O'Donnell categorizes delegative democracies as democracies in the sense that they satisfy Robert Dahl's criteria for polyarchy³⁹.

However, it is worth noting that delegative democracy is often regarded as more democratic, yet comparatively less liberal when compared to representative democracy⁴⁰. This perspective highlights the centrality of majority rule and endows the president with substantial authority to represent the collective interests of the nation throughout their specified term in office. Consequently, other institutional apparatuses such as courts, legislatures, and political parties are frequently viewed as nuisances to the president's authority within the context of delegative democracy⁴¹. O'Donnell also argues that

“The horizontal accountability characteristic of representative democracy is extremely weak or nonexistent in delegative democracies. Furthermore, since the institutions that make horizontal accountability effective are seen by

³⁷ Guillermo O'Donnell, “Delegative Democracy,” *Journal of Democracy* 5, no. 1 (January 1994). <https://doi.org/10.1353/jod.1994.0010>.

³⁸ O'Donnell, “Delegative Democracy,” 59.

³⁹ O'Donnell, “Delegative Democracy,” 56

⁴⁰ O'Donnell, “Delegative Democracy,” 60. See also Peter H. Smith and Melissa R. Ziegler, “Liberal and Illiberal Democracy in Latin America,” *Latin American Politics and Society* 50, no. 1 (Spring, 2008).

⁴¹ O'Donnell, “Delegative Democracy,” 60.

delegative presidents as unnecessary encumbrances to their mission, they make strenuous efforts to hamper the development of such institutions⁴². ”

Accordingly, presidents are seen as “saviors of the country” (*salvadores de la patria*). Thus, the characteristics of delegative democracies include the extreme personalization of politics and the tendency for presidents to bypass parliaments and rule the country by presidential decree (*decretismo*)⁴³. There is no doubt that this is a degeneration that drives the presidential system from its democratic spirit and leads to excessive concentration of power in the hands of the president. According to Sartori, “*decretismo*” is a dysfunctional response of non-functioning systems⁴⁴. Although decisions are made more slowly in institutionalized democracies, the institutional mechanisms in their creation and the duration of discussion reduce the likelihood of error and facilitate their implementation once decisions are made. In contrast, in delegative democracies, decisions are taken by the president and their close circle without being submitted to a wide discussion and consultation process⁴⁵. As a result, elected presidents in these democracies tend to adopt a polarizing approach and discourse in their relations with the state and the public that excludes and neutralizes the actors and civil society organizations envisaged by the system⁴⁶.

Building upon O’Donnell’s line of thinking, Larkins elaborates that hyper-presidentialism is a more extreme form of delegative democracy⁴⁷. In light of this, it is clear that both O’Donnell and Larkins emphasize the disproportionate concentration of power in the hands of the president. However, the processes that lead to this concentration differ. While presidential dominance in delegative democracies is a coincidental outcome of historical, social, political, and economic factors, in hyper-presidentialism, it is an “*overt action by the president to change the regime and centralize power in his or her hands*”⁴⁸. In addition, hyper-presidentialism is characterized by an even greater centralized power in the executive and a remarkable lack of checks and balances⁴⁹. Hyper-presidential systems represent the president’s effective maneuver to circumvent constitutional checks and reshape both formal and informal regulations to serve personal or other agendas. In these setups, presidents must actively strive to alter the rules to

⁴² O’Donnell, “Delegative Democracy,” 61-62.

⁴³ O’Donnell, “Delegative Democracy,” 66.

⁴⁴ Sartori, *Comparative Constitutional Engineering*, 164.

⁴⁵ O’Donnell, “Delegative Democracy,” 66.

⁴⁶ Mustafa Okşar, *2017 Anayasa Değişiklikleri Çerçevesinde Yürütme Erkinin Üstünlüğü* (Ankara: Yetkin, 2019), 40.

⁴⁷ Larkins, *The Legacies of Hyper-Presidentialism*, 64.

⁴⁸ Larkins, *The Legacies of Hyper-Presidentialism*, 65.

⁴⁹ Larkins, *The Legacies of Hyper-Presidentialism*, 64.

consolidate more authority within the presidential sphere. The president's efforts to undermine checks and balances would inevitably target the legislative and judicial branches. Evidently, controlling the judiciary is one of the means by which presidents amass excessive power. In order to exert control over the judiciary, presidents must employ strategies such as altering the composition or jurisdiction of the judicial branch or implementing both approaches simultaneously. These actions are undertaken with the aim of safeguarding themselves against constitutional scrutiny and establishing a judicial system that is conducive to the fulfillment of their objectives. Having a judiciary or constitutional court that aligns with the president's interests can serve as a valuable instrument for consolidating power and legitimizing the new set of rules that govern the political landscape⁵⁰. In these systems, the legislature is predominantly under the control or dominance of the president's political party, and it will either pass supportive laws or remain silent while the executive changes the political system⁵¹.

The expansion of presidential powers in hyper-presidential countries includes extensive decree powers, exclusive legislative initiative, the ability to propose constitutional amendments, partial veto powers, and the power to call for referendums⁵². Additionally, non-legislative institutional features, such as the president's ability to appoint ministers without congressional approval and the existence of emergency powers, further enhance the president's authority⁵³.

It is possible to achieve hyper-presidentialism through either "*undemocratic, illegal, or quasi-illegal*" means, such as self-coups or plebiscites⁵⁴ in which the president can alter the rules of the game. In such situations, the president may bend or break the rules to consolidate their power while maintaining the appearance of respect for legal values. Larkins gives the examples of France and Argentina, explaining that presidents accomplish this through the widespread use of quasi-constitutional decrees and plebiscitary means. In other instances, he cited examples in Peru and Russia where presidents have created hyper-presidentialism as a result of a self-coup⁵⁵. It is worth keeping in mind that the referendum for the constitutional amendments of 2017 in Turkey

⁵⁰ Larkins, *The Legacies of Hyper-Presidentialism*, 65-66.

⁵¹ Larkins, *The Legacies of Hyper-Presidentialism*, 66.

⁵² Cheibub, Elkins, Ginsburg, "Still the Land of Presidentialism?"; Marcelo Alegre and Nahuel Maisley, "Presidentialism and Hyper-Presidentialism in Latin America," in *The Oxford Handbook of Constitutional Law in Latin America*, ed. Conrado Hübner Mendes, Roberto Gargarella and Sebastián Guidi (Oxford: Oxford University Press, 2022), 384.

⁵³ Alegre and Maisley, "Presidentialism and Hyper-Presidentialism in Latin America," 384-385.

⁵⁴ Özsoy Boyunsuz, "The AKP's Proposal for a "Turkish Type of Presidentialism" in Comparative Context," 7.

⁵⁵ Larkins, *The Legacies of Hyper-Presidentialism*, 69.

“to alter the rules of the game” was held during a state of emergency, which could be described as a period when fundamental freedoms essential to a genuinely democratic process were curtailed⁵⁶, as will be seen in the subsequent chapters.

1.3 Conclusion

In examining government relations, it is often concentrated on the interactions between the legislative and executive branches. However, a thorough grasp of the political landscape necessitates looking beyond this paradigm, especially in presidential systems in some Latin American countries and Turkey. It is equally important to analyze how the government and opposition interact.

The opposition constitutes an indispensable element within the democratic representation framework⁵⁷. One of its primary functions lies in its role - checking on government⁵⁸. Therefore, it is equally important to examine the suppression of opposition as one of the president’s attempts to undermine checks and balances. This study therefore places a special emphasis on the role of the opposition in Turkey’s hyper-presidential system that emerged after the 2017 constitutional amendments.

⁵⁶ OSCE, *Republic of Turkey Constitutional Referendum: 16 April 2017, OSCE/ODIHR Limited Referendum Observation Mission Final Report* (Warsaw: June 22, 2017).

⁵⁷ Dahl, “Preface”.

⁵⁸ Ludger Helms, “Studying Parliamentary Opposition in Old and New Democracies: Issues and Perspectives,” *The Journal of Legislative Studies* 14, no. 1-2 (2008). <https://doi.org/10.1080/13572330801920788>.

CHAPTER 2

2 TURKEY'S POLITICAL EVOLUTION IN RECENT DECADES

Turkey's political landscape has changed a lot since the AKP took power in 2002. It heavily influenced the constitution, policies, and structures of the institutions. Chapter 2 analyzes Turkey's historical background before the AKP and then examines the political evolution under the AKP until 2017. It clarifies the major AKP initiatives, programs, and tactics, as well as how they have influenced Turkey's development. Additionally, the chapter looks at the debates on the presidential system, focusing especially on the political environment before the referendum, the referendum campaign, and its characterization as a plebiscite.

2.1 Historical Background

Stifling dissent and restricting freedom of expression have been a continuous and long-standing trend in Turkey's history, dating back to the Ottoman Empire. This chapter explores a short history of political opposition in Turkey, covering both the era of the Ottoman Empire and the aftermath of the establishment of the Turkish Republic. The historical narrative reveals that the challenges Turkey faces today regarding democracy and freedom of expression are part of a broader, long-standing struggle. Having a thorough understanding of this historical context is essential to comprehending the current problems that Turkey is facing in these areas.

Journalism began too late in the Ottoman Empire in 1831, although foreigners and non-Muslim citizens used to print some newsletters within the Empire. However, these newsletters were not considered part of Ottoman journalism, and the first newspaper of the Empire was agreed to be the *Takvim-i Vekayi*, which was ordered to be founded by Sultan Mahmud II himself. However, it should not be considered a newspaper as it is today since it was printed by the civil servants of the palace to inform citizens about the reforms. Even though it was a newspaper of the Sultanate, it was censored from time to time and eventually shut down⁵⁹.

Moving forward to the late 19th century, the Ottoman Empire saw significant political developments. In 1876, the first constitution was promulgated during the reign of Sultan Abdulhamid II by the efforts of Grand Vezir Midhat Paşa⁶⁰. A bicameral parliament was established, and the Sultan even accepted some basic human rights,

⁵⁹ M. Kazım Benek, "Osmanlı'da Basının Doğuşu ve II. Meşrutiyete Kadarki Gelişimi," *Siirt Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 6, no. 7 (2016).

⁶⁰ Roderic H. Davison, *Reform in the Ottoman Empire: 1856-1876* (Princeton: Princeton University Press, 1963).

including press freedom⁶¹. However, he ensured his right to declare a state of siege during an emergency and send into exile any person he deemed dangerous to himself or the empire⁶². Due to the crisis that emerged from the Russo-Turkish War (1877-1878), he “suspended” the parliament until the Empire was ready for a parliamentary monarchy and never summoned it again for thirty years⁶³.

With the promulgation of the 1908 Constitution, freedom of association was introduced for the first time in the Ottoman Empire, albeit with restrictive and ambiguous definitions⁶⁴. Nevertheless, the Empire’s strict press censorship remained in effect, leading to the deaths of four journalists between 1909 and 1923⁶⁵. During the transition phase from the Ottoman Empire to the Republic of Turkey, the establishment of the 1921 Constitution, which de facto abolished the monarchy⁶⁶, did not show an increased era of press freedom. Instead, it was ordered to cease the opposition newspapers⁶⁷.

The parliament under the 1921 Constitution was not merely a legislative branch but an organ that concentrated all the powers within itself; it was a system of assembly government that held legislative, executive, and even judicial authority. The founder father, Mustafa Kemal, assumed the separation of powers as a characteristic of constitutional monarchy and abstained from it in favor of the principle of supremacy of the parliament, to break the chains from the Ottoman Sultanate⁶⁸. With the establishment of the 1924 Constitution, the supremacy of the parliament was ensured; however, an executive power emerged within the legislative branch, thereby transitioning to a parliamentary system⁶⁹.

⁶¹ 1876 Ottoman Empire Constitution, art. 12. “The press is free under the law.”

⁶² 1876 Ottoman Empire Constitution, art. 113. “In the event that there are signs and evidence indicating that a revolution is about to break out in a part of the country, the government has the right to declare an administrative state of emergency in that part of the country. The administrative state of emergency shall consist of the temporary suspension of laws and regulations, and the method of administration of the place under the administrative state of emergency shall be determined by special order. It is exclusively in the power of the Sultan to expel and expel from the Sultanate those who are proven to have violated the security of the government upon the investigation by the administrative police.”; Alan Palmer, *The Decline and Fall of the Ottoman Empire* (New York, Barnes & Noble, 1994), 145-146.

⁶³ Palmer, *The Decline and Fall of the Ottoman Empire*, 151; Giuseppe Franco Ferrari, “Rights and Freedoms in the Turkish Constitution of 1924,” *DPCE Online* 61, no. 4 (2023): 3598. <http://dx.doi.org/10.57660/dpceonline.2023.2051>.

⁶⁴ Robert Bianchi, *Interest Groups and Political Development in Turkey* (Princeton: Princeton University Press, 1984), 109-110.

⁶⁵ Ahmet Çakır, “Basın Tarihi: Sansür Tarihi,” *Radikal*, July 22, 2001, <https://web.archive.org/web/20150518101825/http://www.radikal.com.tr/haber.php?haberno=8708>.

⁶⁶ Selin Esen, “The Place of the Judiciary in the 1924 Constitution of Turkey,” *DPCE Online* 61, no. 4 (2023): 3608. <http://dx.doi.org/10.57660/dpceonline.2023.2052>.

⁶⁷ Ferrari, “Rights and Freedoms in the Turkish Constitution of 1924,” 3605.

⁶⁸ Esen, “The Place of the Judiciary in the 1924 Constitution of Turkey,” 3608-3609.

⁶⁹ Esen, “The Place of the Judiciary in the 1924 Constitution of Turkey,” 3609.

The trend of censorship continued even after the establishment of the Republic of Turkey in 1923, when democracy was not immediately realized. In the period leading up to the establishment of the republic, the *Cumhuriyet Halk Fırkası* (CHF, Republican People's Party) sought to suppress alternative political movements in order to establish a homogeneous Turkish identity for the nation-building of the young republic. Dissent was often interpreted as opposition to Kemalist ideology⁷⁰. One example of this was the feminist *Kadınların Halk Fırkası* (Women's People's Party)⁷¹, which was eventually banned in 1924⁷².

The parliament was controlled by a single political party, and there were reports that independent candidates faced obstacles in entering parliament through public pressure⁷³. Notably, Zeki Bey, the only independent deputy in parliament, opposed a bill that sought to abolish the caliphate and was deemed a traitor for his stance⁷⁴. In his memoirs, Zeki Bey even claimed that Mustafa Kemal ordered his assassination due to his opposition⁷⁵. Meanwhile, the Kurds began a rebellion under the leadership of Sheikh Said following the caliphate's abolition⁷⁶. On February 25, 1925, the government declared martial law and suppressed the uprising. Subsequently, those who founded a group based on religious principles to achieve political goals were labeled traitors through an amendment to the first article of the Law of High Treason⁷⁷.

On March 4, 1925, the Law on Maintenance of Order was enacted, granting the government broad powers for two years and establishing "Independence Tribunals"⁷⁸.

⁷⁰ Turkuler Isiksel, "Between Text and Context: Turkey's Tradition of Authoritarian Constitutionalism," *International Journal of Constitutional Law* 11, no. 3 (2013): 712. doi:10.1093/icon/mot024.

⁷¹ Bertil Emrah Oder, "The Feminist Struggle and the 1924 Constitution: Feminists as Constitutionalists," *DPCE Online* 61, no. 4, (2023): 3518-3519. <http://dx.doi.org/10.57660/dpceonline.2023.2046>.

⁷² Oder, "The Feminist Struggle and the 1924 Constitution," 3522.

⁷³ Alexander E. Balistreri, "Turkey's Forgotten Political Opposition: The Demise of Kadirbeyoğlu Zeki Bey," *Welt Des Islams: International Journal for the Study of Modern Islam* 55, no. 2 (2015): 167-168.

⁷⁴ Türkiye Büyük Millet Meclisi Zabıt Cerideleri, Devre 2, Cilt 7, March 3, 1924.

⁷⁵ Balistreri, "Turkey's Forgotten Political Opposition," 175.

⁷⁶ For more information see, Robert Olson, *The Emergence of Kurdish Nationalism and the Sheikh Said Rebellion, 1880-1925* (Austin: University of Texas Press, 1989), 108-127; Martin van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (London and New Jersey: Zed Books, 1992), 286-289; Mete Tunçay, *Türkiye Cumhuriyeti'nde Tek-Parti Yönetimi'nin Kurulması (1923-1931)* (Ankara: Yurt, 1981), 127-139.

⁷⁷ The first version of the article was as follows: "Those who oppose the legitimacy of the Grand National Assembly by word, deed or written and those who cause sedition are considered traitors."; Olson, *The Emergence of Kurdish Nationalism and the Sheikh Said Rebellion*, 123-124; Tunçay, *Türkiye Cumhuriyeti'nde Tek-Parti Yönetiminin Kurulması*, 135.

⁷⁸ Robert W. Olson and William F. Tucker, "The Sheikh Said Rebellion in Turkey (1925): A Study in the Consolidation of a Developed Uninstitutionalized Nationalism and the Rise of Incipient (Kurdish) Nationalism," *Die Welt des Islams: International Journal for the Study of Modern Islam* 18, no. 3-4 (1978): 203, 124. <https://doi.org/10.2307/1570466>; Erik Jan Zürcher, *The Unionist Factor: The Role of the Committee of Union and Progress in the Turkish National Movement (1905-1926)* (Leiden: E. J. Brill, 1984), 140; Tunçay, *Türkiye Cumhuriyeti'nde Tek-Parti Yönetiminin Kurulması*, 139; Zeynep Alemdar, "'Modelling' for Democracy? Turkey's Historical Issues with Freedom of Speech," *Middle Eastern Studies* 50, no. 4 (July 2014): 570.

Under this law, all major newspapers except two were shut down, effectively silencing critics of the ruling party⁷⁹. Prominent leftists, communists, and journalists were also tried by these tribunals⁸⁰, and the leaders of the Kurdish rebellion were subsequently executed for sedition⁸¹. On June 3, 1925, the Progressive Republican Party's (*Terakkiperver Cumhuriyet Fırkası*) offices were closed by the Independence Tribunals after it declared that respect for religious traditions and beliefs contributed to the Kurdish uprising in the Southeast⁸². Similarly, the Free Party (*Serbest Fırka*), founded in 1930, was dissolved shortly after its inception. During this period, the political opposition underwent a systematic elimination. Elections were structured with a two-tier system and limited to a single choice, which was not free or competitive⁸³.

Additionally, the use of Penal Code provisions to suppress free expression has been a longstanding practice, dating back to the early years of the Republic. For instance, the Turkish Penal Code No. 765, the first penal code of the Republic that came into force in 1926, was utilized to suppress the far-right opposition. Its Article 163 was considered a continuation of the Law of High Treason⁸⁴. The Law on Maintenance of Order was abolished in 1929, but in 1931, during efforts to establish a multi-party regime, the critical

⁷⁹ Olson and Tucker, "The Sheikh Said Rebellion in Turkey (1925)," 204.

⁸⁰ Zürcher, *The Unionist Factor*, 140-141; Tunçay, *Türkiye Cumhuriyeti'nde Tek-Parti Yönetimi'nin Kurulması*, 142-146; Olson and Tucker, "The Sheikh Said Rebellion in Turkey (1925)," 204.

⁸¹ Olson, *The Emergence of Kurdish Nationalism and the Sheikh Said Rebellion*, 123-124; van Bruinessen, *Agha, Shaikh and State*, 290-291; Olson and Tucker, "The Sheikh Said Rebellion in Turkey (1925)," 205; Bernard Lewis, *The Emergence of Modern Turkey*, 2nd ed. (London, Oxford and New York: Oxford University Press, 1968), 266.

⁸² Olson and Tucker, "The Sheikh Said Rebellion in Turkey (1925)," 206-209; Tunçay, *Türkiye Cumhuriyeti'nde Tek-Parti Yönetimi'nin Kurulması*, 146-149; Mona Hassan, *Longing for the Lost Caliphate: A Transregional History* (Princeton and Oxford: Princeton University Press, 2016), 169-170.

⁸³ Aslı Topukcu, "1924 Constitution and the Protection of Fundamental Rights" *DPCE Online* 61, no. 4 (2023): 3588.

⁸⁴ Turkish Penal Code, no. 765, March 13, 1926 (repealed), art. 163. "Anyone who, in violation of secularism, establishes, organizes, or directs and manages a society for the purpose of adapting the social, economic, political, or legal basic order of the state, even partially, to religious principles and beliefs, shall be punished with heavy imprisonment for eight to fifteen years.

Those who join such societies or guide others to join such societies shall be sentenced to heavy imprisonment for five to twelve years.

Anyone who, contrary to secularism, uses religion or religious sentiment or things considered sacred by religion as a means of propaganda or indoctrination for the purpose of adapting the social, economic, political, or legal basic order of the state, even partially, to religious principles and beliefs, or for political purposes or for the purpose of obtaining and establishing political advantage, shall be punished with heavy imprisonment for five to ten years.

Any person who, for the purpose of obtaining personal influence or benefit, uses religion, religious sentiments, or things recognized as sacred by religion or religious books as a means of propaganda or incitement by any means whatsoever, shall be punished with heavy imprisonment for two to five years.

The penalty of imprisonment shall be increased by one-third for those who commit the acts specified in the above paragraphs within state offices, municipalities, or economic enterprises whose capital partially or wholly belongs to the state, trade unions, labor organizations, schools, institutions of higher education, or among their officers, employees, or members.

If the acts specified in the third and fourth paragraphs are committed by means of broadcasting, the penalty to be imposed shall be increased by half."

press was silenced by implementing Press Law No. 1881. This law empowered the government to suspend the publication of newspapers that were deemed detrimental to the “general politics of Turkey”⁸⁵.

Following the Kurdish insurrection, the government identified communism as the next internal threat, in line with the international trend at the time. In 1936, an amendment was made to the Turkish Penal Code that prohibited the establishment of organizations aimed at spreading communism and making communist propaganda⁸⁶. This amendment led to the development of legal provisions that could be utilized to restrict freedom of expression, the freedom of the press, and the freedom of association. Consequently, numerous individuals were subjected to trials and convictions based on news articles and translations⁸⁷.

Despite the restrictions on freedoms imposed, a shift towards greater political pluralism began to take shape with the emergence of an opposition party in 1946. The newly formed Democrat Party (*Demokrat Parti*, DP), which originated within the parliament, prompted the ruling CHP to adopt a more lenient stance towards associations. In contrast to the previous version, the 1946 amendment to the Law of Associations aimed

⁸⁵ Turkish Press Law no. 1881, July, 25, 1931, art. 50 (repealed). "Newspapers or magazines may be temporarily suspended by the decision of the Executive Board of Deputies for publications that affect the public policy of the country. The provisions of Article 18 shall be applied to those who continue to publish a newspaper or periodical closed in this way.

The responsible persons of a newspaper closed in this way may not publish a newspaper under another name during the period of suspension."; Alemdar, “‘Modelling’ for Democracy?” 570.

⁸⁶ The Law Amending Some Articles of the Turkish Penal Code, no. 3038, June 23, 1936, art. 141-142 (repealed). Art. 141. “Any person who establishes, organizes, or directs societies with the aim of establishing the domination of one social group over the others in the country by the use of violence, or to eliminate a social group by the use of violence, or to overthrow the economic or social orders established in the country by the use of violence, shall be punished with heavy imprisonment from five years to twelve years.

The same penalty shall be imposed on anyone who establishes, organizes, or directs societies within the country with the aim of overthrowing any political or legal order of the society by the use of violence.

Anyone who participates in these organizations shall be punished with heavy imprisonment for one to three years.

Any person who establishes, organizes, or directs a society that aims to shake or weaken national sentiment in the country, except for the cases indicated in the above paragraphs, shall be sentenced to one to three years of imprisonment with hard labor.

Anyone who participates in the aforementioned associations shall be sentenced to imprisonment for six months to two years.

The penalties to be imposed on those who re-organize the above-mentioned societies, which have been ordered to be disbanded, even under a false name or by collusion, shall be increased by not less than one third.” Art. 142. “Whoever uses propaganda to establish the domination of one social group over the others in the country through the use of violence, or to abolish a social group through the use of violence, or to overthrow economic or social orders established in the country through the use of violence, or to overthrow any political or legal order of the country through the use of violence, shall be punished with imprisonment from one year to five years.

If the propaganda is intended to shake or weaken national sentiment, the penalty shall be imprisonment for six months to two years.

Anyone who praises the acts mentioned above shall also be sentenced to the same penalty.”

⁸⁷ Alemdar, “‘Modelling’ for Democracy?” 571.

to promote the development of civil society by liberalizing the regulations governing associations⁸⁸.

The DP, which came to power in 1950, initially began with modest political liberalization⁸⁹ and declared freedom of the press with the passage of the Press Law⁹⁰. However, this was short-lived, as major restrictions were imposed on the press just four years later with the enactment of the Law on Certain Offenses Committed by Broadcast or Radio⁹¹. This law made it a crime to publish news that undermined the political or financial reputation of the state⁹², resulting in the imprisonment of 26 journalists between 1959 and 1960. Over time, the DP became increasingly restrictive, both within and outside of parliament.

In 1960, the government formed an investigation council with the power to act as prosecutors and judges, allowing it to shut down publishing houses, ban certain publications, and confiscate them⁹³. Additionally, the government expropriated the properties belonging to the opposition CHP and abolished their right to speak on the radio and participate in elections through a joint list as part of a broader overhaul of the Election Law. Simultaneously, a significant encroachment on academic freedom was observed as university autonomy was effectively terminated. Furthermore, an evident relationship between political preferences and administrative measures emerged as the city of Kırşehir, which had backed the CHP in previous elections, was demoted from its position as a city to that of a district within the administrative hierarchy⁹⁴.

⁸⁸ Bianchi, *Interest Groups and Political Development in Turkey*, 114; Alemdar, “‘Modelling’ for Democracy?” 570.

⁸⁹ Isiksel, “Turkey’s Tradition of Authoritarian Constitutionalism,” 713.

⁹⁰ Turkish Press Law no. 5680, July 24, 1950, art. 1 (repealed). “The press is free. Printed works and their publication shall be subject to the provisions of this law.”

⁹¹ Law on Certain Offenses Committed by Broadcast or Radio no. 6334, June 17, 1954 (repealed).

⁹² Law on Certain Offenses Committed by Broadcast or Radio no. 6334, March 17, 1954, art. 3 (repealed). “Those who publish false news, reports, or documents of this nature, which are of such a nature as to undermine the political or financial reputation of the state or to cause public alarm and excitement, shall be sentenced to imprisonment from 1 year to 3 years and a heavy fine not less than 2,500 liras.”

⁹³ Alemdar, “‘Modelling’ for Democracy?” 570; Law on the Duties and Powers of the Grand National Assembly of Turkey Investigation Council no. 7468, April 28, 1960, art. 2 (repealed). “The Investigation Committees of the Grand National Assembly of Turkey are authorized to:

- a) To prohibit all kinds of publications in order to ensure the safe conduct of the investigation,
- b) In case of non-compliance with the publication ban, the publication or distribution of the publication or non-publication shall be prohibited.
- c) The confiscation of the periodical or non-periodical, the suspension of the publication of the periodical, or the closure of the printing house
- ç) seizure of all kinds of documents, documents, or goods deemed necessary for the investigation or which are among the means of evidence,
- d) To take measures and decisions on meetings, movements, demonstrations, and similar activities of a political nature,
- e) To take all measures and decisions it deems necessary for the safe conduct of the investigation and to make use of all means of the government”

⁹⁴ Yılmaz Turgut, *Siyasal Muhalefet*, 334.

The DP's "national will" discourse, which prioritized its parliamentary majority over the opposition and the critical importance of pluralist democracy, had a long-term negative impact. This demonstrated the party's willingness to suppress any opposition and set an unfortunate precedent for future governments. It failed to recognize the importance of opposition and democracy, ultimately undermining its own legitimacy⁹⁵.

On May 27, 1960, the Turkish military launched a coup, toppling the government, executing its top leaders and putting an end to the country's first attempt at democratic transition. In the aftermath of the military takeover, the Constituent Assembly passed the 1961 Constitution, which is widely regarded as the most liberal constitution in the history of the Republic⁹⁶. The 1961 Constitution provided for the separation of powers, checks and balances, and the autonomy of administrative agencies. Furthermore, it ensured the independence of the judiciary and established the Constitutional Court. It was particularly protective of the freedom of association, stating that "*everyone possesses the right to establish an association without obtaining prior permission.*" However, this constitutional guarantee did not last long, as the government was granted the power to suspend associational activity through constitutional amendments passed in 1971⁹⁷.

In 1971, Turkey faced yet another military intervention that granted vast powers to the generals to suppress freedom of expression. With the enactment of martial law, the military was given the authority to censor broadcasts and communications through any means, as well as impose heavy fines and imprisonment⁹⁸. The Constitution was amended

⁹⁵ Yılmaz Turgut, *Siyasal Muhalefet*, 335.

⁹⁶ Ergun Özbudun, "Democracy, Tutelarism, and the Search for a New Constitution", in *Turkey's Democratization Process*, ed. Carmen Rodríguez, Antonio Avalos, Hakan Yılmaz and Ana I. Planet (London and New York: Routledge, 2014), 296.

⁹⁷ Bianchi, *Interest Groups and Political Development in Turkey*, 109-110.

⁹⁸ Martial Law no. 1402, May 15, 1971, art. 3 and 16 (repealed). "The Martial Law Commander is authorized to take the extraordinary measures listed below in cases required by the general security and public order in the Martial Law region:

- a) To search residences and all kinds of buildings belonging to associations, political parties, unions, clubs, and other institutions with legal personalities (including autonomous institutions), as well as their premises and all kinds of indoor and outdoor spaces, and to seize evidence or goods subject to compulsory acquisition from them without any application, request, or decision;
- b) To impose, record, or stop censorship on broadcasts and communications made by all kinds of means such as telephone, radio, television, including broadcasts of the Turkish Radio and Television Corporation, and to make use of them primarily in circumstances requiring service;
- c) To control all kinds of publications, communications, letters, telegrams, and other communications made through words, writings, pictures, films, and sounds; to register the printing and publication of newspapers, magazines, books, and other publications, and to impose censorship on them or prohibit their entry into the Martial Law region; to close printing houses that print or publish printed documents such as books, magazines, newspapers, brochures, posters, banned by the Martial Law Command;
- d) To expel from the Martial Law region or prohibit entry into certain places within this region for those convicted of crimes committed against public order, state forces, personal liberty, public safety, murder, or effective actions against individuals, or those under general security surveillance, or those without a specific residence in the Martial Law region, or other suspicious individuals;

that same year to impose further restrictions on freedom of expression, press, and association⁹⁹, leading to the closure of 39 newspapers and the arrest of numerous

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- e) To prohibit the possession, preparation, production, or transport of all kinds of weapons, ammunition, bombs, destructive materials, explosive materials, radioactive materials, or gases, and to issue orders for the delivery of items, tools, or vehicles used in their preparation or production, to search and collect them;
 - f) To temporarily suspend or permit the use of strike and lockout powers; to prohibit, prevent, or take preventive measures against actions such as occupation, actual situation, boycott, and slowdown of work;
 - g) To prohibit all kinds of meetings or demonstrations in closed or open places, to suspend the activities of all kinds of associations and organizations, or to subject them to permission; to subject the establishment of new associations to permission;
 - h) If necessary, to control commercial and industrial institutions that produce, store, transport, and sell essential commodities, and to take measures required by the needs;
 - i) To control, close, or determine the opening and closing times and limit the entertainment places such as casinos, coffeeshouses, pubs, taverns, theaters, cinemas, bars, discos, clubs, and other gaming halls;
 - j) To take measures regarding land, sea, and air traffic regulations, to record or prohibit the entry and exit of transportation vehicles into the region for security purposes;
 - k) To keep records of those who want to enter or leave the Martial Law region;
 - l) To record and prohibit going out into the streets and, if necessary, to take all or some of the civil defense measures;
 - m) If necessary, to benefit from the buildings, vehicles, and personnel belonging to the Treasury, special administrations, and municipalities in the Martial Law region;
 - n) To implement the decisions of the Council of Ministers regarding Martial Law.

During the use of the duties and powers listed in this article, the provisions of the Constitution regarding the privileges and immunities granted to diplomatic missions and their members by international law, as well as legislative immunity, are reserved.”

⁹⁹ Constitutional Amendment on amending some articles and adding temporary articles to the Constitution of the Republic of Turkey no. 1488, September 22, 1971, Art. 22, 26, 29, 46 (repealed). Art. 22. “The press is free; cannot be censored.

The state shall take measures to ensure the freedom of the press and of obtaining information.

Freedom of the press and of obtaining information may be restricted by law only in cases where it is necessary to protect the integrity of the state and nation, public order, national security, confidentiality required by national security, or general morality, or to prevent encroachment upon the dignity, honor, and rights of individuals, to prevent incitement to commit crimes, or to ensure the fulfillment of the purpose of the judiciary.

Without prejudice to decisions to be made by the judiciary within the limits specified by law for the purpose of fulfilling the judiciary’s function, no publication ban shall be imposed on events.

Newspapers and magazines published in Turkey may be confiscated by judicial decision in cases where crimes specified by law are committed; and also, in cases where there is imminent danger to the integrity of the state and nation, national security, public order, or general morality, upon the order of the competent authority clearly authorized by law. The competent authority issuing the confiscation order shall notify the court of this decision within 24 hours at the latest. If the court does not approve this decision within three days at the latest, the confiscation decision shall be deemed null and void.

Newspapers and magazines published in Turkey may be closed by court decision in cases where they are convicted of publishing contrary to the principles of national, democratic, secular, and social Republic based on national security, public order, general morality, human rights, and freedoms, or the indivisibility of the state and nation of the Republic.” Art. 26. “Individuals and political parties have the right to benefit from non-official communication and broadcasting tools held by public legal entities. The conditions and procedures for this benefit are regulated by law in accordance with democratic principles and fairness standards. Except for cases based on a reason that threatens the integrity of the State, the nation, and human rights-based national democratic, secular, and social Republic, national security, and general morality, the law cannot impose restrictions preventing the public from obtaining information, reaching opinions and thoughts, and freely forming public opinion through these means.” Art. 29. “Everyone has the right to establish associations without prior permission. The manner and procedures for the exercise of this right shall be prescribed by law. The law may impose limitations for the purpose of preserving the integrity of the State’s territory and nation, national security, public order, and general morality.

No one shall be compelled to become a member of an association or to remain a member thereof.

Associations may be dissolved by a judicial decision in cases specified by law. In cases where delay would be detrimental to the integrity of the State’s territory and nation, national security, public order, and general morality, the activity may be suspended by the order of the authority explicitly authorized by law until a judicial decision is rendered.” Art. 46. “Workers and employers have the right to establish unions and union

journalists and academics¹⁰⁰. Although the 1960 coup had outlawed Turkey's two major parties, the 1971 military interference was less extreme and only resulted in the banning of two minor parties—the Workers' Party of Turkey (*Türkiye İşçi Partisi*, TİP) and the National Order Party (*Milli Nizam Partisi*, MNP)—by the Constitutional Court¹⁰¹. The highly politicized atmosphere of the 1970s led to the enactment of a very restrictive law of associations as a reaction to civil society organizations¹⁰². Despite the end of military rule in 1973, there were still restrictions on freedom of expression and the press.

In the late 1970s, Turkey's political and economic crises intensified, resulting in internal conflicts within the coalition government and ultimately leading to the regime's collapse through a military intervention on September 12, 1980. The impact of the 1980 coup on political parties was significant. Within a year, the National Security Council, the military governing body, banned all parties and their leaders who had been in power prior to the coup. Additionally, numerous journalists and writers were handed harsh sentences, totaling 3,351 years and three months in jail. The 1982 Constitution that followed, which emerged as a result of the coup, imposed severe restrictions on fundamental rights and freedoms, with strict governmental rules in place for any opposition¹⁰³. As Isiksel argues that “*the 1982 Constitution should be understood as a paradigmatic instance of authoritarian constitutionalism*”¹⁰⁴. She defines authoritarian constitutionalism as taking the form of a commitment to a constitution that subordinates citizens' freedoms to an oppressive conception of public order and security¹⁰⁵. Moreover, political parties were prohibited from establishing youth and women's branches, and it became illegal for students, academics, and civil servants to join political parties¹⁰⁶. Under military rule, State of Emergency Law was implemented, further restricting freedom of expression and assembly¹⁰⁷. This law allowed for the prohibition and collection of publications, the regulation and banning of broadcasts and publications, and the control

federations, to freely join them, and to withdraw from membership without prior permission. The procedures and principles to be followed in the exercise of these rights shall be specified by law. The law may impose limitations for the purpose of preserving the integrity of the state and nation, national security, public order, and general morality.

The statutes, management, and operations of unions and union federations shall not be contrary to democratic principles.”

¹⁰⁰ Alemdar, “‘Modelling’ for Democracy?” 571.

¹⁰¹ Sabri Sayarı, “The Changing Party System,” in *Politics, Parties, and Elections in Turkey*, ed. Sabri Sayarı and Yılmaz Esmer (Boulder and London: Lynne Rienner, 2002), 15.

¹⁰² Law of Associations no. 1630, December 2, 1972 (repealed); Alemdar, “‘Modelling’ for Democracy?” 571.

¹⁰³ Alemdar, “‘Modelling’ for Democracy?” 572.

¹⁰⁴ Isiksel, “Turkey's Tradition of Authoritarian Constitutionalism,” 716.

¹⁰⁵ Isiksel, “Turkey's Tradition of Authoritarian Constitutionalism,” 710.

¹⁰⁶ Sayarı, “The Changing Party System,” 24.

¹⁰⁷ State of Emergency Law no. 2935, October 27, 1983.

and prevention of stage plays and movies. Meetings and demonstrations, both indoors and outdoors, could also be prohibited, postponed, controlled, or disbanded¹⁰⁸.

Ahead of the 1983 parliamentary elections, the National Security Council vetoed the candidacies of numerous individuals, allowing only three newly formed parties to compete¹⁰⁹. Despite the end of military rule with the 1983 elections, restrictions on fundamental rights persisted¹¹⁰, with political restrictions continuing until 1987. However, that year, a referendum was held to lift the political bans imposed by temporary Article 4 of the Constitution, which allowed political leaders from the 1970s to return to the political stage¹¹¹.

During the 1990s, Turkey's efforts to join the European Union (EU) were underway, and the several political parties by the Constitutional Court became a highly controversial political issue¹¹². In 1991, the implementation of the Anti-Terror Law led to the repeal of the most heavily criticized provisions of the Turkish Penal Code, including Articles 141 and 142, which punished the expression of communist ideas, and Article 163, which punished the formation of a society with religious values for political purposes¹¹³. However, despite this repeal, freedom of expression remained restricted by the Anti-Terror Law and certain articles of the Turkish Penal Code, making it difficult to consider this a victory for freedom of expression.

The 1990s were marked by a significant increase in terrorist activities in Turkey, with armed conflicts between the PKK (*Partiya Karkerên Kurdistanê*, Kurdistan Workers' Party) and Turkish forces ongoing since 1984. The capture of PKK leader

¹⁰⁸ Law of State of Emergency no. 2935, October 27.1983, art. 11/e, f, h, m. "According to the first paragraph of Article 3 (b) of this Law, in the declaration of a state of emergency; in addition to the measures envisaged in Article 9 with the aim of maintaining general security, public order, and preventing the spread of violent incidents, the following measures can also be taken:

e) Prohibiting or permitting the printing, duplication, publication, and distribution of newspapers, magazines, brochures, books, handbills, wall posters, and similar materials, and prohibiting the entry into and distribution within the region of those printed or duplicated outside the emergency area; collecting printed and published books, magazines, newspapers, brochures, posters, and similar printed materials that are prohibited from printing and distribution.

f) Monitoring and, if necessary, recording or banning speech, writing, images, films, records, audio and visual tapes, and all types of audio broadcasts.

h) Inspecting all kinds of stage plays and films, and if necessary, stopping or banning them.

m) Prohibiting, postponing, permitting, or determining, specifying, and allocating the place and time of meetings and demonstrations to be held in closed and open places; allowing any kind of permitted assembly, monitoring it, or distributing it if necessary."

¹⁰⁹ Sayarı, "The Changing Party System," 24.

¹¹⁰ Alemдар, "'Modelling' for Democracy?" 572.

¹¹¹ Harald Schöler, "Turkey," in *Elections in Asia and the Pacific: A Data Handbook Vol. I Middle East, Central Asia and South Asia*, ed. Dieter Nohlen, Florian Grotz and Christof Hartmann (Oxford: Oxford University Press, 2004), 235-236; Alemдар, "'Modelling' for Democracy?" 573.

¹¹² Sayarı, "The Changing", 26.

¹¹³ Anti-Terror Law no. 3713, April 12, 1991, art. 23/c. "Articles 140, 141, 142 and 163 of the Turkish Penal Code No. 765".

Abdullah Öcalan in 1999 led to the Ministry of Interior's Public Relations Department issuing a circular that prohibited government agencies and organizations from using terms related to the Kurdish problem in press releases and publications. In May of that year, the penalties for violating freedom of expression were raised by the Court of Cassation's General Penal Board¹¹⁴.

Despite attempts to expand freedom of expression through constitutional amendments during negotiations with the EU in the 2000s, it remained heavily restricted. According to the EU's Progress Report on Turkey (2001),

"It has been recognised by some official sources that there are currently around 9,000 prisoners for crimes connected to freedom of expression. A significant number of journalists, intellectuals, writers and politicians have been detained for expressing views and opinions. Official data for 2000 show that 261 persons have been sentenced under Articles 159 and 312 of the Penal code and 324 under the Anti-Terrorist law. These figures in 1999 were 347 and 1,317 respectively¹¹⁵."

In conclusion, the history of Turkey is marked by an enduring trend of stifling dissent and limiting the freedom of expression that stretches back to the Ottoman Empire. Throughout history, many governments and regimes have used various strategies to restrict fundamental rights and freedoms. Moments of achievement are frequently followed by setbacks in Turkey's story of the battle for democracy and freedom of expression. This legacy influenced the political landscape in recent decades, which will be covered in more detail later. It is essential to comprehend the historical context to analyze Turkey's contemporary challenges regarding democracy and freedom of expression.

2.2 The Political Landscape in Recent Years: 2002-2017

When the AKP came to power in Turkey in 2002, it marked an important turning point in the country's political landscape. The AKP was established in 2001 as a successor to the *Refah Partisi* (the Virtue Party)¹¹⁶, which had been dissolved by the Constitutional Court on the grounds of breaching Turkey's fundamental principle of secularism¹¹⁷. The AKP was founded through the convergence of former *Refah Partisi* members,

¹¹⁴ European Commission, *1999 Regular Report from the Commission on Turkey's Progress Towards Accession*, October 13, 1999, 12.

¹¹⁵ European Commission, *2001 Regular Report on Turkey's Progress Towards Accession*, November 13, 2001, 24-25.

¹¹⁶ Angel Rabasa and F. Stephen Larrabee, *The Rise of Political Islam in Turkey* (RAND National Defense Research Institute, 2008), 41.

¹¹⁷ Turkish Constitutional Court, E. 1997/1 K. 1998/1, January 16, 1998.

conservative politicians¹¹⁸, and religious leaders¹¹⁹. The party campaigned on a comprehensive agenda that prioritized economic development, democratic consolidation, and an end to government corruption and inefficiency¹²⁰. The AKP's message resonated with a broad range of voters, including traditional conservative voters, religious groups, and even some liberal and secular voters who were disillusioned with the previous government¹²¹. In the 2002 elections, the AKP won a landslide victory, securing 34% of the vote and 363 of the 550 seats¹²². The party's success was due in part to the weakness of its opponents, who were beset by internal divisions and corruption scandals¹²³. The AKP's rise to power marked the beginning of a new era in Turkish politics, characterized by the party's efforts to modernize the country's economy and political system while promoting conservative and religious values. It undertook a comprehensive reform program, demonstrating a strong commitment to combating corruption by implementing numerous national and international conventions and agreements¹²⁴. These efforts were viewed as a step in the right direction for Turkey and contributed to the country's rise on the international stage. In general, the AKP's early years in power were characterized by an emphasis on economic and political reform, which helped put Turkey on the path to greater stability and prosperity. Due to its enormous appeal, the AKP conducted a pivotal referendum in 2007 with the purpose of amending several constitutional articles. Among the alterations brought about by the amendment, the most notable was the introduction of the direct election of the president by the people. Consequently, political system debates emerged. Thus, there had been uncertainty regarding whether the political system of Turkey was parliamentary or semi-presidential¹²⁵. This decade-long hesitation was supposedly resolved by the 2017 constitutional amendment, which will be discussed later.

After coming to power, the ruling party engaged in a protracted conflict with the two powerful institutions within the secular establishment, namely, the military and the

¹¹⁸ R. Quinn Meham, "From the Ashes of Virtue, a Promise of Light: The Transformation of Political Islam in Turkey," *Third World Quarterly* 25, no. 2 (2004): 350.

¹¹⁹ Birol A. Yeşilada, "The AKP, Religion, and Political Values in Contemporary Turkey: Implications for the Future of Democracy," *Turkish Studies* 24, no. 3-4 (2023): 4. <https://doi.org/10.1080/14683849.2023.2186784>.

¹²⁰ "2002 Genel Seçimleri Beyannamesi," AK Parti, 2002, <https://www.akparti.org.tr/media/318780/3-kasim-2002-genel-secimleri-secim-beyannamesi-sayfalar.pdf>.

¹²¹ Soner Cagaptay, "The November 2002 Elections and Turkey's New Political Era," *Middle East Review of International Affairs*, 6, no. 4 (December, 2002): 42.

¹²² "Türkiye Geneli Siyasi Partilerin ve Bağımsızların Kazandıkları Milletvekili Sayıları," YSK, 2002, <https://www.ysk.gov.tr/doc/dosyalar/docs/2002MilletvekiliSecimi/turkiye/milletvekilisayisigrafik.pdf>.

¹²³ Cagaptay, "The November 2002 Elections and Turkey's New Political Era," 42-43.

¹²⁴ Fırat Kimya, "Political Economy of Corruption in Turkey: Declining Petty Corruption, Rise of Cronyism?" *Turkish Studies* 20, no. 3 (2019): 357-358.

¹²⁵ Bülent Yavuz, "2017 Anayasa Değişikliğinin Doğurduğu Tereddütler ve Çözüm Yolları," *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 12, no. 1-2 (2008).

judiciary, both of which assert their roles as custodians of the legacy of the founding father, Mustafa Kemal Atatürk, and protectors of the Republic of Turkey¹²⁶. As delineated in the thorough analysis of the 2007 constitutional amendment below, it becomes evident that the government faced substantial opposition from the military during the 2007 presidential election. Furthermore, 2008 saw the beginning of a legal case that sought to dissolve the ruling party, predicated on allegations that it had evolved into a locus of activities that violated the secularism principle. Subsequently, the Constitutional Court ruled that the dissolution of the party was unwarranted; however, it ruled that fifty percent of the party's state funding should be suspended because of its involvement in actions opposed to the tenets of secularism¹²⁷.

During the period of 2010-2013, the ruling party experienced a significant shift towards authoritarianism¹²⁸, as its intolerance towards dissent increased notably during this time, with the government taking various measures to silence voices critical of its policies¹²⁹. The Gezi Park protests are the most notable example of this period. The Gezi Park protests, a peaceful demonstration that began as part of a long-running campaign against the destruction of the park as part of the redevelopment of the Taksim area¹³⁰ escalated into widespread protests across the country. The response to the protests included police intervention, and the situation became a pivotal moment in the country's political climate. In the aftermath of these events, high-profile cases emerged, including that of Osman Kavala, who was sentenced to life in prison on charges of attempting to overthrow the government or attempting to carry out its duties for allegedly organizing this protest, while others received 18-year sentences for crimes against the government¹³¹.

In 2014, the provision for the popular election of the president, introduced by the 2007 constitutional amendment, was implemented for the first time. Consequently, Recep Tayyip Erdoğan became the first president in Turkey's history to be elected by the people, leading to a significant accumulation of presidential power, supported by a friendly

¹²⁶ Berk Esen and Şebnem Gümüşçü, "Turkey: How the Coup Failed," *Journal of Democracy* 28, no. 1, (2017): 60.

¹²⁷ Turkish Constitutional Court, E. 2008/1 K. 2008/2, July 30, 2008.

¹²⁸ Ergun Özbudun, "AKP at the Crossroads: Erdoğan's Majoritarian Drift," *South European Society and Politics* 19, no. 2 (2014). <https://doi.org/10.1080/13608746.2014.920571>.

¹²⁹ Berk Esen and Şebnem Gümüşçü, "Rising Competitive Authoritarianism in Turkey," *Third World Quarterly* 37, no. 9 (2016). <https://doi.org/10.1080/01436597.2015.1135732>.

¹³⁰ Amnesty International, *Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey* (2013): 5.

¹³¹ Hikmet Adal and Melin Durmaz, "Gezi Trial: Aggravated Life Sentence for Osman Kavala, 18 Years in Prison for Seven Others," *Bianet*, <https://m.bianet.org/english/law/260956-gezi-trial-aggravated-life-sentence-for-osman-kavala-18-years-in-prison-for-seven-others>.

parliamentary majority¹³². Consequently, the current political climate in Turkey is marked by an unprecedented concentration of power in the presidency and a lack of checks on it, which poses a significant threat to the country's democratic institutions and political pluralism.

The president vested a large degree of power between 2014 and 2016. As will be detailed later, although this was a significant event, it did not instantly result in a hyper-presidential government. Nonetheless, the government's systematic suppression of the opposition following the 2016 coup attempt weakened checks and balances. This made possible the constitutional amendments of 2017 that cemented Turkey's move towards hyper-presidentialism. Consequently, the current political climate in Turkey is marked by an unprecedented concentration of power in the presidency and a lack of checks on it, endangering the country's democratic institutions and political pluralism.

To gain a more comprehensive understanding of the 2017 constitutional amendment, it is essential to begin by scrutinizing the 2007 constitutional amendment that introduced the direct election of the president.

2.3 The Constitutional Amendment of 2007

The 2017 constitutional amendment, which outlines Turkey's transition to a hyper-presidential system, actually started its journey with the 2007 constitutional amendment. The 2007 amendment, swiftly approved, followed a political crisis realized the same year during the parliament's election of the president. Critics have accused the government of adopting majority imposition rather than seeking consensus among all major political parties in its approach to constitutional amendments. This method first became evident during the amendment proposal after the presidential crisis in 2007, and later reappeared in 2010¹³³ and 2017.

On May 16, 2007, the failure to hold an election in a timely manner in accordance with constitutional requirements resulted in a crisis when Ahmet Necdet Sezer's term as president of Turkey came to an end. As a result, the parliament voted to hold early elections on July 22, 2007¹³⁴. The delay of the presidential election was caused by a controversial interpretation of constitutional provisions by well-known constitutional

¹³² Ziya Öniş, "Monopolising the Centre: The AKP and the Uncertain Path of Turkish Democracy," *The International Spectator: Italian Journal of International Affairs* 50, no. 2 (2015). <https://doi.org/10.1080/03932729.2015.1015335>.

¹³³ Andrew Arato, "The Constitutional Reform Proposal of the Turkish Government: The Return of Majority Imposition," *Constellations: An International Journal of Critical and Democratic Theory* 17, no. 2 (2010).

¹³⁴ OSCE, *Republic of Turkey Early Parliamentary Elections: 22 July 2007, OSCE/ODIHR Election Assessment Mission Report* (Warsaw: November 27, 2007), 2.

jurists, who argued that a quorum of two-thirds of the entire parliamentary members was required for a meeting to elect the president¹³⁵. This circumstance opened the door to a constitutional amendment that had a significant impact on Turkey's constitutional order. It has been argued that the constitutional jurists' interpretation of the constitution was motivated by politics. The opposition party opposed the ruling party's candidate, Abdullah Gül, along with the jurists who started this discussion, have advanced this constitutional interpretation due to Gül's contentious stance on secularism¹³⁶.

The subject under debate revolved around the following issue. According to Article 102 of the Constitution, the election of the president necessitated a qualified majority of 367 votes in the first two rounds and an absolute majority of 276 votes in the third and fourth rounds. Former Chief Prosecutor of the Court of Cassation argued in an article that the specified quorum of 367 in the constitution not only served as the quorum for decision-making but also the quorum for meetings. According to this perspective, at least 367 participants in the voting process were essential; otherwise, the outcome would be deemed invalid¹³⁷.

Notably, Article 102 did not include any explicit quorum requirement for meetings. Since there was a notable absence of specific quorum guidelines within this article, the determination of the quorum fell under the purview of Article 96 of the Constitution's first paragraph, which expressly states that "*unless there is an alternative provision in the Constitution, the Grand National Assembly of Turkey shall convene with at least one-third of the total number of its members*". Accordingly, this means that for the parliament to convene and continue with the election of the president, the presence of a minimum of 184 deputies in the parliament suffices¹³⁸.

In the first round of voting held on April 27, 2007, a total of 361 deputies cast their votes, with Gül receiving 357 votes. It is of utmost importance to emphasize that the ruling party won with a commanding 363-seat majority in the 2002 election¹³⁹. Another significant development occurred on April 27 with the publication of a memorandum on the website of the Armed Forces. Just before midnight on April 27, a formal statement

¹³⁵ Cem Eroğul, "2007 Seçimi Bunalımından Çıkarılabilecek Dersler," *Ankara Üniversitesi SBF Dergisi* 62, no. 3 (2007): 168. https://doi.org/10.1501/SBFder_0000002037.

¹³⁶ Eroğul, "2007 Seçimi Bunalımından Çıkarılabilecek Dersler," 169.

¹³⁷ "367 Fikrini O Ortaya Atmıştı...Sabih Kanadoğlu: Gül Travmayı Atlamamış, Bahçeli'ye Sadece Gülüyorum," *Independent Türkçe*, <https://www.indyturk.com/node/29086/haber/367-fikrini-o-ortaya-atm%C4%B1%C5%9Ft%C4%B1-sabih-kanado%C4%9Flu-g%C3%BCI-travmay%C4%B1-atlamam%C4%B1%C5%9F-bah%C3%A7eliye>.

¹³⁸ Kemal Gözler, "Hukukun Siyasetle İmtihanı: Kim Sınıfta Kaldı?" *Türkiye Günlüğü* 89 (Summer 2007), <https://www.anayasa.gen.tr/kim-sinifta-kaldi.htm>.

¹³⁹ Türkiye Büyük Millet Meclisi Tutanak Dergisi, 22. Dönem 5. Yasama Yılı 96. Birleşim, April 27, 2007, <https://www.tbmm.gov.tr/Tutanaklar/Tutanak?Id=8074567b-2a1f-4545-a340-0185ceac74f7>.

was released on the official website. The statement emphasized the seriousness of both the ongoing nomination process and the rise in anti-secular incidents across the country. These developments were perceived as posing a significant threat to the established order. Furthermore, the statement clarified that the Armed Forces were prepared to exercise their legal rights and perform their responsibilities without reservation. As Göztepe argues, the text of the memorandum hung like the sword of Damocles over both the AKP government and the Constitutional Court, which had yet to rule on the CHP's application¹⁴⁰.

On May 1, 2007, the Constitutional Court issued its ruling in alignment with the aforementioned interpretation. Accordingly, the Court ruled that in order to ensure that the election of the president is based on consensus, the majority in the first paragraph of Article 102 relates to the quorum for a meeting, and the majority in the third paragraph relates to the quorum for a decision, consequently declaring the first round of elections invalid on the basis of its alleged unconstitutionality¹⁴¹. Subsequently, the parliament decided to "reconvene" the first round on May 2. As the Constitutional Court's decision was not published in the Official Gazette¹⁴², there was no legal basis for the differential majority required for the second round of presidential elections. Consequently, when the parliament convened to set new election dates, the first election date, which was a repeat of the first round, was set for Sunday, May 6. However, on May 2, the ruling party's parliamentary group submitted a motion to the parliament to renew the parliamentary elections and hold them on June 24, 2007, while the voting rounds for the presidential election had not yet been completed. Article 77 of the Constitution stipulates that the parliament can decide to renew the elections before the end of the legislative term and that this decision will be valid until the new parliament is elected. However, what makes the motion controversial is that it stipulates that the parliament must fulfill its obligation to elect the president within a certain period of time (within a period of 30 days), and if this obligation cannot be fulfilled, the parliament must immediately renew the parliamentary elections, the question is whether the parliament can decide to renew the elections without fulfilling this obligation. It is also debatable whether it can refrain from electing the president. Upon the Constitutional Court's announcement of a stay of execution, discussions concerning the most appropriate date for early elections and the necessary constitutional amendments imperative for the direct election of the president

¹⁴⁰ Ece Göztepe, "Sevilmeyen Anayasayı Kim Korumak İster?" *Birikim Dergisi*, <https://birikimdergisi.com/dergiler/birikim/1/sayi-218-haziran-2007/2401/sevilmeyen-anayasayi-kim-korumak-ister/6013>.

¹⁴¹ Turkish Constitutional Court, E. 2007/45 K. 2007/54, May 1, 2007.

¹⁴² According to Article 153 of the Constitution, the decisions of the Constitutional Court are binding on all public bodies, real persons, and legal entities as of their publication in the Official Gazette.

by the people began. Preceding the first round of elections, which was held on May 6, the parliament set the date for early elections as July 22, 2007. In addition to all these, after a hectic session of the constitutional commission, the first debate on the proposed constitutional amendment was held on May 7, and the bill was adopted on May 10, 2007¹⁴³.

Subsequently, President Sezer returned all but one provision of the proposed constitutional amendment to the parliament. However, upon the re-endorsement of these provisions by the parliament, the President duly executed his constitutional prerogative by ensuring the publication of the amendments in the Official Gazette. Furthermore, he exercised his authority by deciding to hold a referendum on the issue. Concurrently, he initiated a formal application to the Constitutional Court for the amendment to be annulled¹⁴⁴. In this instance, the Constitutional Court rejected the application for annulment¹⁴⁵. During the parliamentary elections held on July 22, 2007, three political parties secured representation within the parliament. The AKP emerged as the predominant victor, securing 46.6 percent of the total vote and garnering a parliamentary presence with 341 seats¹⁴⁶. In light of these electoral outcomes, Abdullah Gül was elected as the 11th president of Turkey within the reconstituted parliament. Despite Gül's election as president by the parliament, the process of constitutional amendment, which envisaged the election of the president by the people, continued. Consequently, the constitutional amendment was adopted in the referendum held on October 21, 2007.

The constitutional amendment marked the first step towards a presidential system in Turkey. Additionally, this amendment encompassed a reduction in the presidential term from 7 to 5 years, along with the provision for a single renewal of the term. Debate ensued among scholars regarding Turkey's political system following this constitutional amendment. Some contended that the changes rendered the system a semi-presidential one¹⁴⁷, while others argued that, although the amendment brought the system closer to semi-presidentialism, it still retained essential characteristics of a parliamentary system¹⁴⁸. The doctrine critically points out the introduction of direct election of the president, highlighting the absence of concurrent constitutional amendments necessary to

¹⁴³ Göztepe, "Sevilmeyen Anayasayı Kim Korumak İster?"

¹⁴⁴ Eroğul, "2007 Seçimi Bunalımından Çıkarılabilecek Dersler," 169.

¹⁴⁵ Turkish Constitutional Court, E. 2007/72 K. 2007/68, July 5, 2007.

¹⁴⁶ "1983-2007 Yılları Arası Seçim Çevresine Göre Milletvekili Genel Seçimi Sonuçları," YSK, <https://www.ysk.gov.tr/doc/dosyalar/docs/Milletvekili/1983-2007/Turkiye.pdf>.

¹⁴⁷ Erdal Onar, "Türkiye'nin Başkanlık veya Yarı-Başkanlık Sistemine Geçmesi Düşünülmeli Midir?" in *Başkanlık Sistemi*, ed. Teoman Ergül (Ankara: Türkiye Barolar Birliği Yayınları, 2005), 103; Yavuz, "2007 Anayasa Değişikliğinin Doğurduğu Tereddütler ve Çözüm Yolları," 1193.

¹⁴⁸ Özbudun, *Türk Anayasa Hukuku*, 319; Okşar, *Yürütme Erkinin Üstünlüğü*, 31.

ensure the maintenance of the balance of constitutional powers. This imperative arises from the transformation of the head of state into a role that can no longer maintain political neutrality, necessitating a careful recalibration of the constitutional framework¹⁴⁹.

Article 101 of the Constitution raised doubts about the impartiality of the president. Given that the president is elected by popular vote, their ascension to office necessitates the support of a political party. Furthermore, securing a second presidential term demands substantial support from a large political party. These factors pose a challenge for an incumbent president, as simultaneously ensuring impartiality while maintaining political party support proves to be a complex task. The status of presidential candidacy depends on the will of a political party, thus forging a tie between candidates and political parties. Consequently, the constitutional provision stating that “*The person elected President shall be disassociated from their party, if any, and shall cease to be a member of the Grand National Assembly of Turkey*” loses its intended meaning¹⁵⁰. This is most notably exemplified by the continued involvement of the President in the internal affairs of the ruling party after his election in 2014. A salient illustration of this phenomenon is the resignation of the Prime Minister from both the party leadership and the office of prime minister at the President’s request on May 4, 2016. This event has garnered significant media attention and is often referred to as a “palace coup¹⁵¹”. Furthermore, the President’s open campaigning for the ruling party during the 2015 elections stands out as a clear example of presidential partiality¹⁵².

The amendment significantly bolstered the president’s position in terms of democratic legitimacy as compared to the pre-amendment period¹⁵³. Following the amendment, the president, once elected by the people, found themselves better positioned to leverage their powers, with the prospect of not only consolidating existing authority but also potentially extending their influence to a point of systemic dominance¹⁵⁴.

Göztepe’s assertion stood as prescient, affirming that this amendment, encapsulated by the slogan “*Since the Parliament could not elect the president, let’s put the ballot box in front of the people*”, is a candidate to create much bigger problems in the future. It is paramount to underscore that the constitutional amendment of 2007, which

¹⁴⁹ Luciana De Grazia, “Constitutional Coup e Democrazie Illiberali: L’Esperienza della Turchia”, *Rivista AIC* 4 (2018): 387.

¹⁵⁰ Yavuz, “2007 Anayasa Değişikliğinin Doğurduğu Tereddütler ve Çözüm Yolları,” 1195-1196.

¹⁵¹ Emine Kaplan, “#4 Mayıs Saray Darbesi,” *Cumhuriyet*, May 4, 2016, <https://www.cumhuriyet.com.tr/haber/4-mayis-saray-darbesi-527169>.

¹⁵² “Erdoğan: 400 Vekil Alınsaydı Farklı Olurdu,” *Cumhuriyet*, September 8, 2015, https://www.cumhuriyet.com.tr/video/video/363925/Erdoğan_400_vekil_alınsaydı_farklı_olurdu.html.

¹⁵³ Yavuz, “2007 Anayasa Değişikliğinin Doğurduğu Tereddütler ve Çözüm Yolları,” 1195.

¹⁵⁴ Yavuz, “2007 Anayasa Değişikliğinin Doğurduğu Tereddütler ve Çözüm Yolları,” 1197.

was realized rapidly after the decision to hold early elections, changed only the method of election of the president while remaining devoid of any provisions pertaining to the powers of the president. Hence, Göztepe contends that the amendment is the calm before the storm of the new system¹⁵⁵.

The 2007 constitutional misinterpretation, which aimed to prevent the candidacy of a controversial figure on secularism, presented the ruling party with an opportunity to avoid such controversies in the future. Subsequently, through the 2007 constitutional amendment, the party moved one step closer to the presidential system they had wanted since they came to power. It is evident that the President Erdoğan's election by the people in 2014 and the fact that the ruling party had the majority of the parliament effectively eroded the constitutionally prescribed impartiality of the president. The President's open alignment with the ruling party and efforts to exert pressure on the opposition on numerous occasions paved the way for the 2017 constitutional amendment. Consequently, although not constitutionally formalized between 2014 and 2017, the transition to a hyper-presidential regime began a progression that will be elaborated upon in the subsequent chapter.

2.4 Debating a Presidential System in Turkey

During periods when the political system is blocked or when politicians perceive themselves as lacking enough maneuverability within the parliamentary system, debates regarding the political system have been brought up. These discussions aimed to provide relief in this area or to prevent the recurrence of certain systemic problems from the past. While there had been sporadic debates concerning the political system in previous years, it was especially since the 1980s that politicians such as Turgut Özal, Süleyman Demirel, and Tansu Çiller occasionally voiced their demands for a presidential or semi-presidential system. However, none of them made any attempt to implement their proposals; their demands and aspirations remained at the rhetorical level. Although these discussions were momentarily forgotten, Erdoğan, who shares similar aspirations with these, resumed the discussions on the presidential system after becoming the prime minister in March 2003¹⁵⁶.

During Erdoğan's premiership, unlike his predecessors, the proposal for a presidential model did not remain at the level of rhetoric. The AKP's presidential system

¹⁵⁵ Göztepe, "Sevilmeyen Anayasayı Kim Korumak İster?"

¹⁵⁶ Faruk Ataay, "Adalet ve Kalkınma Partisi'nin 'Başkanlık Sistemi' Önerisi Üzerine Değerlendirme," *Alternatif Politika* 5, no. 3 (December, 2013): 268.

proposal was submitted to the Constitution Conciliation Committee, which was tasked with drafting a new constitution¹⁵⁷. This marked a significant shift from abstract discourse to concrete action¹⁵⁸. As seen above, with the 2007 constitutional amendment, a significant stride was taken towards the presidential system.

Furthermore, Aytacı suggests that the twin-election year of 2015 provides a significant backdrop to the debates in Turkey about a transition from a parliamentary to a presidential system. This topic was a persistent theme on the political agenda during this period, with the AKP proposing a constitutional amendment for a presidential system in its election manifesto. The manifesto, entitled “Government Structure and Presidential System,” contained a three-page section outlining the party’s guiding principles for constitutional amendment¹⁵⁹. The AKP believed that a constitutional amendment was necessary to establish a political system based on participation, pluralism, and effectiveness¹⁶⁰, although Kemahlioğlu criticized the manifesto for its lack of specific details on the institutional structures required to achieve these goals. Additionally, the majority of the debate centered on the historical and existing constitutional system¹⁶¹.

In 2014, direct presidential elections were held for the first time following the 2007 referendum. The newly elected president rapidly established a powerful figure exercising greater *de facto* authority than his predecessors. Parliament subsequently passed legislation in March 2015 that provided the president with additional budgetary support¹⁶². While the proponents of a presidential system argued that this shift would strengthen Turkish democracy, the key opposition parties contended that it would further advance authoritarian tendencies. Leaders from opposition parties consistently voiced their concerns about a constitutional transition to a presidential system¹⁶³. Over time,

¹⁵⁷ Demet Çelik Ulusoy, “Measuring the Presidential Powers: New Governmental Design in Turkey,” *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 70, no. 3 (2021): 1028, fn. 57.

¹⁵⁸ Adnan Küçük, “Ak Parti’nin Başkanlık Sistemi Modelinin ABD’deki Başkanlık Sistemi Modelinden Farklılık Arz Eden Yönleri,” *Kırıkkale Üniversitesi Sosyal Bilimler Dergisi* 6, no. 1 (2016): 26.

¹⁵⁹ “Yeni Türkiye Yolunda Daima Adalet Daima Kalkınma: 7 Haziran 2015 Genel Seçimleri Seçim Beyannamesi,” *AK Parti* (July 2015): 34-37. <https://www.akparti.org.tr/media/318795/7-haziran-2015-edited.pdf>.

¹⁶⁰ AK Parti, “Yeni Türkiye Yolunda Daima Adalet Daima Kalkınma,” 34.

¹⁶¹ Özge Kemahlioğlu, “Winds of Change? The June 2015 Parliamentary Election in Turkey,” *South European Society and Politics* 20, no. 4 (2015): 451. <https://doi.org/10.1080/13608746.2015.1115581>.

¹⁶² “Saray’a Para Yetmiyor... Erdoğan’a Örtülü Ödenek Talebi Kabul Edildi,” *Cumhuriyet*, March 27, 2013, <https://www.cumhuriyet.com.tr/haber/saraya-para-yetmiyor-erdogana-ortulu-odenek-talebi-kabul-edildi-237422>.

¹⁶³ “Kılıçdaroğlu: “CHP Olduğu Sürece...”” *CNN Türk*, December 11, 2018, <https://www.cnnturk.com/video/turkiye/-kiliçdaroglu-chp-oldugu-surece>; “HDP Bir Kez Daha Kayda Geçirdi: Başkanlık Sistemi Asla Olmayacak,” *Diken*, April 21, 2015, <https://www.diken.com.tr/soz-sirasi-hdpde-hicbir-sey-ankaradan-gorundugu-gibi-degil/>; Milliyetçi Hareket Partisi, “1 Kasım 2015 Seçim Beyannamesi: Toplumsal Onarım ve Huzurlu Gelecek,” *MHP*, 72. https://www.mhp.org.tr/usr_img/mhpweb/1kasimsecimleri/beyanname_1kasim2015.pdf.

however, the *Milliyetçi Hareket Partisi* (Nationalist Movement Party, MHP) has adjusted its stance on the matter.

Nevertheless, on December 10, 2016, the government submitted a constitutional amendment proposal that advocated for the creation of an executive presidency, a fundamental change in the country's government structure that resulted from discussions between the AKP and the MHP¹⁶⁴.

Before analyzing the 2017 constitutional amendment, a thorough understanding of the contextual environment in which the referendum on this amendment took place is essential.

2.4.1 Political Environment Before the Referendum

Under the AKP rule, the 1982 Constitution has been amended three times, all of which occurred via referendums. Of these, the 2017 referendum is widely considered the most significant, as it sought to alter Turkey's political system via constitutional amendment. The ruling party and the President were vocal in their support for a "yes" vote, despite concerns over an uneven playing field in the lead-up to the referendum¹⁶⁵.

The 2017 referendum was held in the midst of an significant political crisis that was marked by several events. Turkey's political landscape had already been dramatic, as described by Öniş, but 2015 proved to be a watershed moment. In a span of less than five months, Turkey held two national elections that pointed in opposite directions. During the first election in June, the long-ruling AKP lost its parliamentary majority and was unable to form a coalition. As a result, its parliamentary majority dropped from nearly 50 percent to 41 percent¹⁶⁶.

To fully grasp the significance of the 2015 elections, a clear timeline for the "Kurdish peace process" must first be established. When the AKP came to power in 2002, it continued the democratization efforts that the previous coalition government had started, including granting greater recognition to the Kurdish ethnic identity. In 2007, following their election victory, the governing party launched a highly publicized Kurdish peace process to put an end to the long-standing and often violent conflict between the Turkish state and the terrorist organization PKK. This initiative aimed to implement

¹⁶⁴ "AKP, MHP Take Major Step for System Change," *Hürriyet Daily News*, December 12, 2016, <https://www.hurriyetaidailynews.com/akp-mhp-take-major-step-for-system-change-107139>.

¹⁶⁵ OSCE, *Republic of Turkey Constitutional Referendum*, 1.

¹⁶⁶ Ziya Öniş, "Turkey's Two Elections: The AKP Comes Back," *Journal of Democracy* 27, no. 2 (April 2016): 141-143.

reforms that would improve the rights and freedoms of Turkey's Kurdish population, with the ultimate goal of convincing the PKK to relinquish its arms¹⁶⁷.

However, on September 6, 2015, the PKK targeted two armored military vehicles in Dağlica, a town near Turkey's borders with Iraq and Iran. In response, the President said on TV that such attacks would not have happened if voters had given 400 seats to one political party in the June 2015 election¹⁶⁸. His statement, which was quickly broadcasted on the national daily Hürriyet's website, was perceived by some as reinforcing the opposition's view that the president may have escalated tensions with the PKK to garner conservative votes in the November 2015 snap election. However, the President swiftly distanced himself from any association with violence¹⁶⁹. Nevertheless, a group of AKP supporters led by the chief of the AKP's youth branch and an İstanbul deputy attacked Hürriyet's İstanbul headquarters a few hours later, adding to the series of assaults on the press and dissidents that summer¹⁷⁰. The Human Rights Association's study reveals that between March and June 2015, there were 176 attacks on the HDP, resulting in five deaths and 522 injuries¹⁷¹. Amidst the rising violence in the region, the peace process came to an abrupt halt in the summer of 2015, and the AKP called for snap elections¹⁷².

As a result of these escalating tensions and political turmoil, the AKP staged a remarkable comeback in the second vote held on November 1, 2015, following a failed attempt to form a government that resulted in a hung parliament. The party regained its majority, allowing it to claim once again that Turkish voters had affirmed its primacy, as they did in 2007 and 2011¹⁷³. This election was pivotal, as the AKP won a two-thirds supermajority in the 550-seat unicameral parliament, paving the way for further discussions on a powerful presidential system¹⁷⁴.

Following the AKP's win in the November 2015 elections, the political situation in Turkey remained turbulent. The party regained its parliamentary majority and much of

¹⁶⁷ F. Stephen Larrabee, "Turkey's New Kurdish Opening," *Survival: Global Politics and Strategy* 55, no. 5 (2013). <https://doi.org/10.1080/00396338.2013.841816>; Öniş, "Turkey's Two Elections", 143.

¹⁶⁸ "PKK Attack Kills Soldiers in South-Eastern Turkey," *BBC*, September 7, 2015, <https://www.bbc.com/news/world-europe-34169988>; Cumhuriyet. "Erdoğan".

¹⁶⁹ Esen and Gümüşçü, "Rising Competitive Authoritarianism in Turkey."

¹⁷⁰ BBC, "PKK Attack Kills Soldiers in South-Eastern Turkey"; "Boynukalın Hürriyet'e Saldırısı Savundu: Bir Dokunulmazlığı Kaldırdık", *BirGün*, October 21, 2015, <https://www.birgun.net/haber/boynukalin-hurriyet-e-saldirisi-savundu-bir-dokunulmazligi-kaldirdik-93117>.

¹⁷¹ "HDP'ye Yönelik Bombalı ve Silahlı Saldırıları Kınıyor, Sorumluları Lanetliyoruz," *İnsan Hakları Derneği*, June 6, 2015, <https://www.ihd.org.tr/hdp-ye-yonelik-bombali-ve-silahlı-saldirilari-kiniyor-sorumlulari-lanetliyoruz/>; Efe Kerem Sözeri, "HDP'ye Yapılan Saldırıları ve Cezasızlık Sistemli Mi?" *T24*, May 18, 2015, <https://t24.com.tr/haber/hdp-ye-yapilan-saldirilar-ve-cezasizlik-sistemli-mi,296981>.

¹⁷² Esen and Gümüşçü, "A Small Yes for Presidentialism," 304.

¹⁷³ Öniş, "Turkey's Two Elections," 141-143.

¹⁷⁴ Öniş, "Turkey's Two Elections," 141.

the ground it had lost in previous elections. However, this did not bring about the stability that the government had hoped for. In a move to consolidate power, the President replaced Prime Minister Davutoğlu with Binali Yıldırım, a figure perceived as more aligned with President Erdoğan. Following this change, the government intensified its efforts to counter the insurgency, leading to crackdowns on academia, the media, and civil society¹⁷⁵. Despite these measures, the political crisis took a new turn when a faction within the Turkish military attempted to overthrow the President and the government in July 2016¹⁷⁶. While military actions have a long history in Turkey, the July 15 coup attempt caught most observers off guard, given the government's previous efforts to limit the military's once-vast political clout¹⁷⁷. It is unusual and unprecedented in Turkish modern history for a civilian government to successfully thwart a military coup. The government holds the Fethullah Gülen Terrorist Organization (FETÖ) responsible for this coup attempt¹⁷⁸.

The coup attempt took place on July 15, 2016, marked by fighter jets from the Turkish Air Force flying over Ankara and tanks blocking bridges in İstanbul. The coup plotters sought to seize crucial targets, which included the General Staff Headquarters, a police special forces base, military high schools, the Atatürk airport, city hall, the national broadcasting station, and important telecommunications and satellite infrastructure. After the coup attempt commenced, the Prime Minister declared it an insurrection at around 11 p.m. Shortly thereafter, around midnight, the President accused a faction of the military forces, led by Fethullah Gülen and his supporters, of attempting to subvert democracy and invade Turkey. The President urged the citizens to rally in public squares and take over Atatürk Airport. Thousands of people flocked to the streets of İstanbul and Ankara in response to this call to action to confront the coup plotters. Top officials from the Department of Religious Affairs responded to the President's pleas by ordering imams in more than 86,000 mosques to recite the salah prayer, which is often used to announce funerals, as a potent act of defiance against the coup. They called on citizens to defend their country and government 'for the love of God and the Prophet'¹⁷⁹.

¹⁷⁵ Esen and Gümüşçü, "A Small Yes for Presidentialism," 304.

¹⁷⁶ Esen and Gümüşçü, "Turkey," 59; Esen and Gümüşçü, "A Small Yes for Presidentialism," 304.

¹⁷⁷ Zeki Sarigil, "The Turkish Military: Principal or Agent?" *Armed Forces and Society* 40, no. 1 (2014); Esen and Gümüşçü, "Turkey," 60.

¹⁷⁸ Arwa Ibrahim, "What was Turkey's Failed Coup About – and What's Happened Since?" *Aljazeera*, July 15, 2022, <https://www.aljazeera.com/news/2022/7/15/turkeys-failed-coup-attempt-explainer#:~:text=The%20Turkish%20government%20has%20blamed,any%20involvement%20in%20the%20coup.>

¹⁷⁹ Esen and Gümüşçü, "Turkey," 61-65.

The coup plotters' reaction to the coup attempt was conflicted. Some lower-ranking soldiers chose to surrender instead of firing on civilians, but in other cases, civilians were shot at or even driven over by tanks. Violent clashes erupted in Ankara and İstanbul. As street violence escalated, the coup plotters attacked key targets like the parliament, the National Intelligence Agency, and the Gölbaşı installation. They also raided the President's hotel in Marmaris, but he had already left for İstanbul and avoided capture. By early on July 16, it became evident that the majority of the Turkish Armed Forces were clearly opposed to the coup, and popular resistance proved to be too strong to overcome¹⁸⁰. The coup resulted in a high death toll; over 300 individuals lost their lives, and 1,491 people sustained injuries, making it the bloodiest coup in Turkish history¹⁸¹.

Several factors contributed to the failure of the coup attempt. These included the use of mid-level officers rather than senior generals, the lack of public, political, and media support, and the crucial roles that popular mobilization, along with the support from the opposition and media, played in thwarting the coup¹⁸².

In conclusion, the political landscape in Turkey over the years has been marked by a series of critical events. The turbulent period leading up to the referendum set the stage for a more authoritarian direction. The failed coup attempt served as a turning point. Unfortunately, the post-coup era brought about an extended state of emergency, human rights violations, and a crackdown on opposition, leading to concerns about the health of democratic institutions and the rule of law in Turkey¹⁸³. Consequently, Turkey went to the 2017 referendum under a state of emergency, in a *de facto* strong executive presidency atmosphere, with governance largely conducted by emergency presidential decrees.

2.4.2 Referendum Campaign

The constitutional reform package included 18 reforms that would significantly alter the political system. These changes included the elimination of the prime minister's office, an increase in the number of parliamentary seats to 600, and granting the president the power to appoint high-level positions in the judiciary. However, the Venice

¹⁸⁰ Esen and Gümüşçü, "Turkey," 61-62.

¹⁸¹ "15 Temmuz Darbe Girişiminin Üzerinden 7 Yıl Geçti: Neler Oldu, Kaç Kurum Kapatıldı, Kaç Kişi Hapse Mahkum Edildi?" *Medyascope*, July 14, 2023, <https://medyascope.tv/2023/07/14/15-temmuz-darbe-girisiminin-uzerinden-7-yil-gecti-neler-oldu-kac-kurum-kapatildi-kac-kisi-hapse-mahkum-edildi/#:~:text=Temmuz%202023%20Cuma-,Haber%20Merkezi,kaybetti%2C%20bin%20491%20kişi%20yaralandı>.

¹⁸² Esen and Gümüşçü, "Turkey," 59.

¹⁸³ Hüsnü Öndül, "OHAL KHK'ları ve İnsan Hakları Mücadelelerine Etkileri," *İnsan Hakları Derneği*, <https://www.ihd.org.tr/wp-content/uploads/2022/06/OHAL-KHKları-Raporu.pdf>.

Commission cautioned that these reforms could result in a political structure that lacks the necessary separation of powers and judicial independence, leading to a presidential regime that is susceptible to authoritarianism¹⁸⁴.

According to the constitution, amending it requires a two-thirds vote in parliament or a three-fifths vote in parliament along with the president's approval to hold a referendum. For an amendment proposal, a three-fifths majority of the parliament must approve it through a secret ballot. The president has the authority to return the laws relating to constitutional amendments to the parliament for reconsideration. If the parliament adopts the law returned by the president with no changes by a two-thirds majority, the president may call for a referendum. If a proposal to amend the constitution is passed by a three-fifths or less than two-thirds majority and is not returned to the parliament for reconsideration by the president, it will be published in the Official Gazette, and a referendum will be held. The amendment will only take effect if it receives the support of more than half of the valid votes cast¹⁸⁵.

In violation of international best practice, the proposed constitutional amendments affecting 72 articles were voted on as a single package, as required by the proposal. This meant that voters were not given the opportunity to vote on each of the amendments

¹⁸⁴ European Commission for Democracy through Law (Venice Commission), *Turkey: Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017* Opinion No. 875/2017 (Strasbourg: March 2017): 29.

¹⁸⁵ Turkish Constitution, art. 175. "Amendment to the Constitution shall be proposed in writing by at least one-third of the total number of members of the Grand National Assembly of Turkey. Bills to amend the Constitution shall be debated twice in the Plenary. The adoption of a bill for an amendment shall require a three-fifths majority of the total number of members of the Assembly by secret ballot. The consideration and adoption of bills for the amendments to the Constitution shall be subject to the provisions governing the consideration and adoption of laws, with the exception of the conditions set forth in this Article.

The President of the Republic may send back the laws on the amendments to the Constitution to the Grand National Assembly of Turkey for reconsideration. If the Assembly readopts, by a two-thirds majority of the total number of members, the law sent back by the President of the Republic without any amendment, the President of the Republic may submit the law to referendum.

If a law on the amendment to the Constitution is adopted by a three-fifths or less than two-thirds majority of the total number of members of the Assembly and is not sent back by the President of the Republic to the Assembly for reconsideration, it shall be published in the Official Gazette and be submitted to referendum.

A law on the Constitutional amendment adopted by a two-thirds majority of the total number of members of the Grand National Assembly of Turkey directly or upon the sending back of the law by the President of the Republic or its articles deemed necessary may be submitted to a referendum by the President of the Republic. A law on the amendment to the Constitution or the related articles that are not submitted to referendum shall be published in the Official Gazette.

Entry into force of the laws on the amendment to the Constitution submitted to referendum shall require the affirmative vote of more than half of the valid votes cast.

The Grand National Assembly of Turkey, in adopting the law on the Constitutional amendment shall also decide on which provisions shall be submitted to referendum together and which shall be submitted individually, in case the law is submitted to referendum.

Every measure including fines shall be taken by law to secure participation in referenda, general elections, by-elections and local elections."

separately, which drew a complaint from one citizen to the ombudsperson about the violation of their freedom of expression¹⁸⁶. This contravened the Code of Good Practice on Referendums, which stipulates that when revising a text covering several separate aspects, a number of questions must be put to the people, as electors may be in favor of one and against another¹⁸⁷.

Although it will be discussed later, the impact of the state of emergency on the referendum must be mentioned here as well. The measures taken during the state of emergency had a negative impact on the referendum. Two emergency decrees were issued, which permanently changed the election-related rules, going beyond the requirements of the emergency. Decree 687, issued on February 9, abolished the Supreme Board of Elections' (*Yüksek Seçim Kurulu*, YSK) media sanctioning powers¹⁸⁸, while Decree 680, issued on January 6, amended a clause affecting the method of voter registration for out-of-country citizens¹⁸⁹. The Constitutional Court, in appeals filed by the CHP deputies, ruled that it lacked the authority to hear appeals to emergency decrees, contradicting previous rulings and effectively barring challenges to referendum-related decrees¹⁹⁰. This situation was exacerbated as the emergency decrees were not considered by parliament within the 30-day period, and their legal status remained in doubt¹⁹¹. Consequently, the opportunity to challenge them was restricted. Although constitutional amendments to election laws are not enforceable for one year after adoption¹⁹², the YSK agreed that the amendments to the law must take effect immediately regarding the referendum's conduct¹⁹³, a breach of international best practice.

¹⁸⁶ OSCE, *Republic of Turkey Constitutional Referendum*, 5.

¹⁸⁷ European Commission for Democracy through Law (Venice Commission), *Revised Code of Good Practice on Referendums* Study No. 887/2017 (Strasbourg: 2022): *Explanatory Memorandum* para. 44. "An even more stringent requirement of free suffrage is respect for unity of content. Electors must not be called to vote simultaneously on several questions without any intrinsic link, given that they may be in favour of one and against another. Where the revision of a text covers several separate aspects, a number of questions must therefore be put to the voters. However, total revision of a text, particularly a Constitution naturally cannot relate solely to aspects that are closely linked. In this case, therefore, the requirement for unity of content does not apply. Substantial revision of a text, involving a number of chapters, may be regarded as being equivalent to total revision; clearly, this does not mean the different chapters cannot be put separately to the popular vote."

¹⁸⁸ Decree Law on Making Certain Regulations under the State of Emergency no. 687, February 9, 2017.

¹⁸⁹ Decree Law on Making Certain Regulations under the State of Emergency no. 680, January 6, 2017.

¹⁹⁰ Turkish Constitutional Court, E. 2016/166 K. 2016/159, October 12, 2016.

¹⁹¹ OSCE, *Republic of Turkey Constitutional Referendum*, 6.

¹⁹² Turkish Constitution, art. 67/7. "Amendments to the electoral laws shall not apply to the elections to be held within one year from the entry into force date of the amendments."

¹⁹³ OSCE, *Republic of Turkey Constitutional Referendum*, 6-7; Venice Commission, *Revised Code of Good Practice on Referendums*, point II.3.b. "The fundamental aspects of referendum law should not be open to amendments to be applied during the year following their enactment or should be written in the constitution or at a level superior to ordinary law."

To ensure a fair and impartial referendum process, the Code of Good Practice on Referendums states that the membership of electoral commissions must be balanced between the proposal's supporters and opponents rather than divided along party lines¹⁹⁴. However, the Organization for Security and Co-operation in Europe (OSCE) observers found evidence of possible malpractices, such as the uneven distribution of chairpersons in the Ballot Board Council between the government and opposition parties¹⁹⁵.

In addition, the OSCE observers reported that during the referendum, special security zones were established in certain southeastern provinces, affecting approximately 670,000 voters. Local officials in the southeast have stated that officers stationed near polling stations were instructed to check the identification papers of voters for any outstanding arrest warrants. This raised concerns among several OSCE observers prior to the referendum, who feared that it could potentially hinder voters from casting their votes¹⁹⁶. Additionally, there were concerns regarding the registration process for individuals who were forced to leave their homes. The United Nations (UN) High Commissioner for Human Rights estimated that between 355,000 and half a million people of Kurdish origin had been displaced in southeast Turkey. These displaced individuals are reported to have relocated to nearby suburbs, towns, and villages, as well as other parts of Turkey¹⁹⁷.

Moreover, the authorities neglected to provide voters with impartial information that presented the arguments for and against the proposed amendments, a requirement stated in the Code of Good Practice on Referendums. Furthermore, the state failed to furnish voters with equitable campaign materials from both sides, thereby leaving it up to qualified parties to fill the void, thereby limiting voters' ability to make a well-informed decision. It is incumbent upon administrative authorities to maintain their duty of neutrality as outlined in the Code of Good Practice on Referendums, which is a critical component in guaranteeing that voters can develop their own opinions and the authorities must offer objective information¹⁹⁸. The OSCE observers noted that the Directorate

¹⁹⁴ Venice Commission, *Revised Code of Good Practice on Referendums*, point II.4.1.e. "Political parties or supporters and opponents of the proposal must be able to observe the work of the impartial body. Membership of supporters and opponents may be limited to lower commissions, which are not permanent. Equality between political parties may be construed strictly or on a proportional basis."

¹⁹⁵ OSCE, *Republic of Turkey Constitutional Referendum*, 8.

¹⁹⁶ OSCE, *Republic of Turkey Constitutional Referendum*, 9-10.

¹⁹⁷ UN Office of the High Commissioner for Human Rights, *Report on the Human Rights Situation in South-East Turkey* (February 2017): 4.

¹⁹⁸ Venice Commission, *Revised Code of Good Practice on Referendums*, point I.2.2.a. "Equality of opportunity must be guaranteed for the supporters and opponents of the proposal being voted on. This implies a neutral attitude by administrative authorities, in particular with regard to:

- i. the referendum campaign;
- ii. coverage by the media, in particular by the publicly owned media;

General of Press and Information published 15,000 copies of informational material that endorsed the amendments and addressed a range of complaints, including those lodged by the “no” campaign¹⁹⁹.

Moreover, the campaign was marked by an uneven playing field, with the significantly more prominent “yes” campaign, led by the AKP and, to a lesser extent, the MHP, receiving support from numerous high-ranking national and local officials, including the Prime Minister and the President. However, the 1982 Constitution mandated that the president remain neutral and impartial, without any political affiliation²⁰⁰. The OSCE observers witnessed the president campaigning for the referendum in connection with the public works’ inauguration in several parts of Turkey. The President became the face of the “yes” movement, traveling around the country and making regular appearances in support of the amendments. These actions blurred the lines between the state and political party, violating paragraph 5.4 of the OSCE Copenhagen Document of 1990 and international best practices²⁰¹. Paragraph 5.4 stipulates that the state and political parties must remain separate. Additionally, the Code of Good Practice on Referendums dictates that public bodies must refrain from excessive and one-sided campaigning, which could sway the results of the vote²⁰². While the YSK received a complaint about the president’s campaign, they claimed to lack control over him. After the referendum, the provision mandating the president’s neutrality was removed from the constitution²⁰³.

iii. public funding of campaign and its actors;

iv. billposting and advertising;

v. the right to demonstrate on public thoroughfares.”; OSCE, *Republic of Turkey Constitutional Referendum*, 11.

¹⁹⁹ OSCE, *Republic of Turkey Constitutional Referendum*, 11.

²⁰⁰ Turkish Constitution, art. 101/4 (repealed). “The person who is elected as the President will be disconnected from their party, if any, and their membership in the Turkish Grand National Assembly will cease.”

²⁰¹ OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (1990): Para. 5.4. “They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

— a clear separation between the State and political parties; in particular, political parties will not be merged with the State;”

²⁰² OSCE, *Republic of Turkey Constitutional Referendum*, 11-12; Venice Commission, *Revised Code of Good Practice on Referendums*, Explanatory Memorandum para. 11. “The situation is different in the case of referendums, since it is legitimate for the different organs of government to convey their viewpoint in the debate for or against the text put to the vote. They must not abuse their position, however. In any event, the use of public funds by public authorities for campaigning purposes must be prohibited in order to guarantee equality of opportunity and the freedom of voters to form an opinion. In addition, the public authorities at every level (national, regional or local), must not engage in excessive, one-sided campaigning, but show objectivity. Clearly, this does not mean they will not take a stand, but they must provide all the necessary information in order to enable voters to arrive at an informed opinion. Voters must be able to acquaint themselves, sufficiently in advance, with both the text put to the vote and, above all, a detailed explanation (point I.3.1.d).”

²⁰³ Turkish Constitution, art. 101.

The abuse of administrative resources was a widespread issue observed by the OSCE across Turkey and extensively reported in independent media. The Prime Minister and other Ministers were seen campaigning during public works inauguration ceremonies, while Mayors utilized the official websites of municipalities for the campaign. The misuse of administrative resources such as public buses and cars for campaigning was also noted. The “yes” campaign materials were displayed on various public buildings, including a UNESCO World Heritage Site, university dormitories, and the Directorate General of Press and Information’s building. Public sector workers and university students were coerced to attend public ceremonies, which were then used for campaigning purposes. In several instances, whole districts or particular institutions declared holidays, and municipal transportation was made free on the days of such events. Officials even tied the government’s potential support for the host area to the outcome of the referendum. These actions violated paragraph 7.6 of the OSCE Copenhagen Document and harmed equal opportunities²⁰⁴. The Code of Good Practice on Referendums specifies that the authorities must not use public funds for campaigning purposes to ensure equality of opportunity and the right of voters to form an informed opinion²⁰⁵.

The AKP’s campaign stirred up nationalist and anti-Western sentiments by highlighting the disruption of pro-government demonstrations in European cities and repeatedly referencing the referendum’s connection to a broader “sacred cause”²⁰⁶. It portrayed the opposition as a covert scheme involving multiple terrorist organizations collaborating with opposition parties (CHP and HDP)²⁰⁷.

²⁰⁴ OSCE, *Copenhagen Document*, Para. 7.6. “To ensure that the will of the people serves as the basis of the authority of government, the participating States will — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;”

²⁰⁵ OSCE, *Republic of Turkey Constitutional Referendum*, 12; Venice Commission, *Revised Code of Good Practice on Referendums*, Explanatory Memorandum para. 37. “There must be no use of public funds by the authorities for campaigning purposes, in order to guarantee equality of opportunity and the freedom of voters to form an opinion (point II.4.4.c, cf. point I.3.1.b).”

²⁰⁶ Hasret Dikici Bilgin and Emre Erdoğan, “Obscurities of a Referendum Foretold: The 2017 Constitutional Amendments in Turkey,” *Review of Middle East Studies* 52, no. 1 (2018): 38. <https://doi.org/10.1017/rms.2018.9>.

²⁰⁷ Esen and Gümüşçü, “A Small Yes for Presidentialism,” 307-308; “Adalet Bakanı Bekir Bozdağ: Terör Örgütleri ‘Hayır’ İçin Çalışıyor!” *T24*, February 4, 2017, <https://t24.com.tr/haber/adalet-bakani-bekir-bozdag-teror-orgutleri-hayir-icin-calisiyor,387009>; “Başbakan Yıldırım: PKK, FETÖ, HDP Hayır Deddiği İçin Evet Diyoruz,” *NTV*, February 5, 2017, <https://www.ntv.com.tr/turkiye/yildirim-pkk-feto-hdp-hayir-dedigi-icin-evet-diyoruz,CgyPjoMkGEOGlqU4ajUpgg>; “Erdoğan: 15 Temmuz’da Milletimin Üzerine Bomba Yağdıranlar Bugünün ‘Hayır’cılarıdır,” *T24*, March 5, 2017, <https://t24.com.tr/haber/erdogan-15-temmuzda-milletimin-uzerine-bomba-yagdiranlar-bugun-hayircilaridir,392106>.

Meanwhile, supporters of the “no” campaign faced numerous obstacles and undue restrictions on their right to campaign during the referendum. Examples include municipal police preventing the CHP members from handing out campaign materials²⁰⁸, stopping a HDP campaign vehicle for noise pollution, and preventing activists from the Ankara Bar Association from distributing campaign materials²⁰⁹. In addition, many “no” activists were physically assaulted, including incidents of mob interruptions²¹⁰, assaults on campaigners distributing leaflets, and violent disruptions of “no” rallies²¹¹. According to the Ministry of Interior, there were 139 campaign-related incidents between February 16 and April 12, with 67 aimed at political parties, including 45 directed at the AKP²¹². Furthermore, numerous “no” campaigners were arrested on various charges, such as organizing illegal public gatherings or insulting the president. For instance, four members of the Social Liberty Party were detained for four days for allegedly conducting an illegal campaign event. Similarly, a student who posted a “no” campaign video was detained for allegedly insulting the president²¹³. Students who were preparing a cycling campaign tour in support of the “no” campaign were arrested for organizing an illegal event²¹⁴. Additionally, a high school student was arrested for allegedly insulting the president while circulating “no” flyers, and a sound technician and a HDP activist were also arrested.²¹⁵

Furthermore, some “no” activists had trouble renting venues for events or had their events canceled by authorities or venue owners at short notice. For instance, the CHP in Konya was unable to secure a venue for their meeting, while authorities in İzmir canceled a planned “no” vote event with only one day’s notice²¹⁶. In Muş, the HDP rally had to be moved to a smaller town after permission to stage the event was denied.

²⁰⁸ “CHP’li Kadınlara Zabıta Saldırısı!” *Politik Yol*, March 21, 2017, <https://www.politikyol.com/chpli-kadinlara-zabita-saldirisi/>.

²⁰⁹ OSCE, *Republic of Turkey Constitutional Referendum*, 13, fn. 50.

²¹⁰ “‘Hareketin Lideri Devlet Bahçeli’: ‘Hayır’cı Eski MHP’li Oğan’ın Yozgat’taki Etkinliğine Saldırı,” *Diken*, March 26, 2017, <https://www.diken.com.tr/hareketin-lideri-devlet-bahceli-hayirci-eski-mhpli-oganin-yozgattaki-etkinligine-saldiri/>.

²¹¹ Paul Benjamin Osterlund, “‘No’ Campaigners Find Themselves Victims of Violence Ahead of Turkey Referendum,” *National News*, March 30, 2017, <https://www.thenationalnews.com/world/no-campaigners-find-themselves-victims-of-violence-ahead-of-turkey-referendum-1.17761>.

²¹² OSCE, *Republic of Turkey Constitutional Referendum*, 13, fn. 51.

²¹³ Kemal Göktaş, “‘Bu Hayır Videosu Tutarsa Beni Tutuklarlar’ Dedi; Erdoğan Şikayet Etti, Tutuklandı,” *Cumhuriyet*, March 21, 2017, <https://www.cumhuriyet.com.tr/haber/bu-hayir-videosu-tutarsa-beni-tutuklarlar-dedi-erdogan-sikayet-etti-tutuklandi-703871>.

²¹⁴ “17 Students Detained for Saying ‘Pedalling for NO’ in Yıldız Technical University,” *Bianet*, March 23, 2017, <https://bianet.org/haber/17-students-detained-for-saying-pedalling-for-no-in-yildiz-technical-university-184772>.

²¹⁵ “‘Hayır’ Diyenlerin Başına Neler Geldi,” *Oda TV*, April 8, 2017, <https://www.odatv4.com/guncel/hayir-diyenlerin-basina-neler-geldi-0804171200-113369>.

²¹⁶ “HAYIR Çalışmalarına Yönelik Saldırının Bilançosu,” *BirGün*, April 7, 2017, <https://www.birgun.net/haber/hayir-calismalarina-yonelik-saldirilarin-bilancosu-154459>.

Additionally, staff from the MHP “no” campaign reported to the OSCE that they had to delay many events due to a lack of suitable venues²¹⁷. In a clear violation of fair play, the Sinop Bar Association was denied the use of the city’s largest auditorium for its informational event, despite the venue being used for a “yes” campaign event²¹⁸. Additionally, state-owned companies and private entities with close ties to the government dominated the media landscape during the referendum, as noted in the OSCE Report²¹⁹.

Furthermore, the Democratic Party in Trabzon was refused permission to hold a campaign meeting because it did not meet the requirements of the ten qualifying parties²²⁰. The anti-terror and press laws were also misused to ban the HDP’s campaign materials, including posters, postcards, and a campaign brochure featuring the party’s imprisoned co-chairs. In addition, a Kurdish song was banned under the pretext that it breached the state’s integrity and Turkish as the official language²²¹. Such actions were in clear violation of paragraph 7.7 of the OSCE Copenhagen Paper, which mandates that participating states should ensure that political campaigning takes place in a fair and free environment, free from regulatory action, violence, or coercion²²².

Although the OSCE observed a few procedural errors during the counting and tabulation processes, their limited observations were generally positive. However, the YSK made two decisions to investigate a large number of unstamped ballots, following the government’s request. After the count began in the east of the country, the ruling party submitted a request to the YSK to count unstamped ballots. The CHP’s delegate to the YSK had reported widespread instances of unstamped ballots early on, but the Board took no action. The Turkish Union of Bar Associations also received many complaints concerning unstamped ballots on referendum day. Despite this, the AKP’s request led to accepting as valid ballot papers that were incorrectly sealed by the ballot boards and not sealed by the board with a control seal. Instructions were sent via mobile text message, some after vote counting had already begun. The implementation of last-minute changes

²¹⁷ OSCE, *Republic of Turkey Constitutional Referendum*, 13, fn. 53.

²¹⁸ “Ümit Kocasakal’a Engelleme,” *Oda TV*, March 30, 2017, <https://www.odatv4.com/guncel/umit-kocasakala-engelleme-3003171200-112749>.

²¹⁹ OSCE, *Republic of Turkey Constitutional Referendum*, 15.

²²⁰ OSCE, *Republic of Turkey Constitutional Referendum*, 13, fn. 53.

²²¹ OSCE, *Republic of Turkey Constitutional Referendum*, 13.

²²² OSCE, *Republic of Turkey Constitutional Referendum*, 13; OSCE, *Copenhagen Document*, Para. 7.7. “To ensure that the will of the people serves as the basis of the authority of government, the participating States will

— ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;”

created inconsistencies and weakened vital anti-fraud protection, which went against the law stating that certain ballots should be deemed invalid²²³. Such actions posed a threat to the principle of equality of votes, which is enshrined in paragraph 7.3 of the OSCE Copenhagen Document, affirming the right of adult citizens to universal and equal suffrage²²⁴.

Although the decisions made by the YSK are not subject to judicial review, the two parties appealed the results to the Constitutional Court. Additionally, one party unsuccessfully requested injunctive relief from the Council of State, which is the highest administrative court in the country. The two major opposition parties have announced their intention to take the case to the European Court of Human Rights (ECtHR)²²⁵. However, the Prime Minister publicly stated that efforts to appeal the referendum results to the ECtHR were futile and that “*the people’s will cannot be changed*”. Such statements have been perceived as discouraging opposition parties from filing formal challenges, and warnings have been issued to courts, including the ECtHR, advising them not to assume jurisdiction over such proceedings²²⁶.

As seen, the referendum process was marked by many violations, creating an uneven playing field for the most important constitutional amendment in Turkish history. The fact that this process is carried out during a state of emergency further complicates the situation, raising concerns about the fairness and transparency of the electoral framework.

2.4.3 Referendum or Plebiscite?

At this stage, it is important to clarify the distinction between a referendum and a plebiscite. While a referendum is defined as any popular vote on a matter of policy²²⁷, these votes can vary significantly in important ways. According to Levitsky and Way, in competitive authoritarian regimes, formal democratic institutions are widely viewed as the primary means of obtaining and exercising political authority²²⁸. As such,

²²³ OSCE, *Republic of Turkey Constitutional Referendum*, 7.

²²⁴ OSCE, *Copenhagen Document*, Para. 7.3. “To ensure that the will of the people serves as the basis of the authority of government, the participating States will — guarantee universal and equal suffrage to adult citizens;”

²²⁵ OSCE, *Republic of Turkey Constitutional Referendum*, 21-22.

²²⁶ “No Court Can Change People’s Decision, PM Says on Referendum Results,” *Hürriyet Daily News*, April 28, 2017, <https://www.hurriyetdailynews.com/no-court-can-change-peoples-decision-pm-says-on-referendum-results-112532>; “Turkey Says European Rights Court Has No Jurisdiction Over Referendum,” *Reuters*, April 20, 2017, <https://www.reuters.com/article/us-turkey-politics-minister-idUSKBN17M0RZ/>.

²²⁷ Matt Qvortrup, “The Rise of Referendums: Demystifying Direct Democracy,” *Journal of Democracy* 28, no. 3 (July 2017): 142.

²²⁸ Steven Levitsky and Lucan A. Way, “Elections Without Democracy: The Rise of Competitive Authoritarianism,” *Journal of Democracy* 13, no. 2 (April 2002): 52.

referendums may be used by these regimes to gain executive supremacy through plebiscites. Unfortunately, as Qvortrup argues, referendums are no longer a shield against executive dominance but a weapon in the hands of illiberal governments. This is due in part to variables such as intimidation, an unfair allocation of media resources, and outright fraud, which frequently lead to the results desired by governing elites in non-democratic systems²²⁹.

According to Guillaume-Hofnung's definition, the key difference between a referendum and a plebiscite is that "*while the referendum allows the people to express themselves freely, the plebiscite allows a person (or more rarely a group) to legitimize itself by asking the people a question that requires a positive response*"²³⁰. However, according to Teziç, finding legal criteria to explain the difference between the two is challenging²³¹. Instead, a thorough analysis of the political context surrounding the vote is necessary to understand the nuances between referendums and plebiscites.

Applying this understanding to the April 16, 2017, referendum in Turkey, it is clear that the vote was held under a state of emergency, despite earlier assurances from the then-Prime Minister that this would not be the case, stating that a referendum would not be held during the state of emergency, so as to prevent the appearance of impropriety²³². However, this commitment was not upheld, and the referendum proceeded under conditions that raised questions about its integrity.

Constitutions in many countries prohibit constitutional amendments during a state of emergency²³³. Spain's Constitution, for example, states that "*The process of constitutional amendment may not be initiated in time of war or under any of the states contemplated in section 116*"²³⁴. However, the Constitution of Turkey does not have a similar clause, meaning that amending the constitution during a state of emergency is not unconstitutional. Despite this, such actions have been criticized, as the referendum for a constitutional amendment may be seen as a plebiscite.

General Comment No. 25, issued by the UN Human Rights Committee in 1996 on the International Covenant on Civil and Political Rights (ICCPR), emphasizes that the protection of fundamental rights such as freedom of expression, assembly, and

²²⁹ Qvortrup, "The Rise of Referendums," 143.

²³⁰ Qvortrup, "The Rise of Referendums," 143.

²³¹ Erdoğan Teziç, *Anayasa Hukuku*, 21st ed. (İstanbul: Beta, 2017): 293.

²³² Fatih Çekirge, "Başbakan'dan Önemli Açıklamalar," *Hürriyet*, November 28, 2016, <https://www.hurriyet.com.tr/yazarlar/fatih-cekirge/basbakandan-onemli-aciklamalar-40290150>.

²³³ Kemal Gözler, *Le Pouvoir de Révision Constitutionnelle*, PhD. Diss., (Université Montesquieu-Bordeaux IV, 1995): 123. <https://www.anayasa.gen.tr/these-partie1-titre1-chapitre2.htm>.

²³⁴ Spanish Constitution, art. 169.

association is crucial for the effective exercise of the right to vote²³⁵. Similarly, the Code of Good Practice on Referendums highlights that respect for human rights, including freedom of expression and the press, freedom of movement, assembly, and association for political purposes, such as setting up political parties, is essential for democratic referendums to take place²³⁶.

As explained above, responding to both the failed coup and a series of terror attacks, the government declared a state of emergency on July 21, which was subsequently expanded seven times in 90-day intervals²³⁷. Under the state of emergency, the Council of Ministers, presided over by the President, was granted the power to issue emergency decrees, and certain rights and freedoms that are typically protected were subjected to restrictions. Additionally, the state of emergency provided the Council of Ministers and Governors with extensive authority, including the ability to prohibit gatherings and protest marches.

During the aftermath of the July 2016 coup attempt, the government shut down 158 media outlets, which included 60 TV and radio stations, 19 newspapers, 29 publishing houses, and 5 press agencies²³⁸. The Directorate General of Press and Information revoked the press cards of 777 journalists, with 621 of them being accused of having links to terrorists without a court order²³⁹. On April 13, the UN High Commissioner for Human Rights released a statement highlighting that the closure of so many media outlets resulted in the loss of thousands of jobs and livelihoods for journalists, and it also impacted the possibility of an informed discussion on the

²³⁵ UN Office of the High Commissioner for Human Rights, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25) (CCPR/C/21/Rev.1/Add.7) (1996): para. 12. “Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.”

²³⁶ Venice Commission, *Revised Code of Good Practice on Referendums*, II.2. “Democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties.”

²³⁷ “Turkey Ends State of Emergency After Two Years,” *BBC*, July 19, 2018, <https://www.bbc.com/news/world-europe-44881328>.

²³⁸ “Urgent Measures Are Needed to Restore Freedom of Expression in Turkey,” *Council of Europe Commissioner for Human Rights*, February 15, 2017, <https://www.coe.int/en/web/commissioner/-/urgent-measures-are-needed-to-restore-freedom-of-expression-in-turkey>.

²³⁹ OSCE, *Republic of Turkey Constitutional Referendum*, 15.

referendum proposals²⁴⁰. As of April 16, which was the referendum day, the bulk of the 150 detained journalists were arrested due to the failed coup²⁴¹. During the referendum period, several journalists were arrested for their alleged connections to terrorist-affiliated groups²⁴². This series of closures, arrests, and convictions contradicts paragraph 7.8 of the OSCE Copenhagen Document and international media freedom guidelines, which leads to systematic self-censorship. Paragraph 7.8 of the OSCE Copenhagen Document stipulates that the states should provide non-discriminatory access to the media for all political groups and individuals willing to take part in the electoral process²⁴³. The free exchange of information and ideas about public and political issues between people, candidates, and elected representatives is essential, according to Paragraph 13 of General Comment 34, and it requires a free press and other means of communication capable of reporting on public issues without fear of censorship or restriction, as well as informing public opinion²⁴⁴.

According to the Venice Commission, which gave its opinion on the constitutional amendments, the state of emergency did not provide the due democratic setting for a constitutional referendum²⁴⁵. Upon reviewing the aforementioned examples in conjunction with the OSCE's assessments, it becomes apparent that there is a concerted effort to apply pressure on the opposition to sway their vote towards a negative outcome. While these examples had already been discussed in detail, it was crucial to acknowledge that a free debate was essential to avoid the referendum becoming a plebiscite. However, many individuals, particularly constitutional lawyers, were afraid to speak out, as pointed out by Gözler in his article "On the Silence of Turkish Constitutionalists in the Face of

²⁴⁰ "Ahead of Referendum, UN Experts Warn Turkey about Impact of Purge on Economic, Social and Cultural Rights," *UN Office of the High Commissioner for Human Rights*, April 13, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21497&LangID=E>.

²⁴¹ European Commission for Democracy through Law (Venice Commission), *Turkey: Opinion on the Measures Provided in the Recent Emergency Decree Laws with Respect to Freedom of the Media* Opinion No. 872/2016 (Strasbourg: March 2017).

²⁴² OSCE, *Republic of Turkey Constitutional Referendum*, 15.

²⁴³ OSCE, *Copenhagen Document*, Para. 7.8. "To ensure that the will of the people serves as the basis of the authority of government, the participating States will — provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;"

²⁴⁴ UN Human Rights Committee, *General Comment No. 34* (CCPR/C/GC/34) (Geneva, 2011), para. 13. "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output."; OSCE, *Republic of Turkey Constitutional Referendum*, 15.

²⁴⁵ Venice Commission, *Turkey: Opinion on the Amendments*, 30.

the Amendment”²⁴⁶. The emergency decree No. 686 is a critical factor to consider²⁴⁷. The decree led to the dismissal of Prof. Kaboğlu, one of Turkey’s most prominent constitutional law professors, and the cancellation of his passport, rendering him unable to work as a professor again. The primary goal of such emergency decrees is to prevent individuals from practicing their professions both in Turkey and abroad. Fear of dismissal due to ongoing layoffs and the state of emergency still in place ahead of the referendum led many to shy away from discussing it. The number of people dismissed during this period was a staggering 125,678, further highlighting the gravity of the situation²⁴⁸.

The OSCE report reveals that the media’s failure to cover the “no” vote propaganda is indicative of the absence of a fair debate. It is evident that a referendum conducted in an environment of fear and restricted freedom of expression amounts to a plebiscite²⁴⁹. Taking into account all the aforementioned circumstances in Turkey, it is reasonable to conclude that the constitutional amendment referendum held on April 16, 2017, resulted in a plebiscite.

2.5 The Constitutional Amendment of 2017

The central focus of the new draft was to establish an executive presidency, a move intended to formalize the President’s *de facto*, yet previously unconstitutional authority and strengthen the executive branch. Comprising 18 amendments that have a far-reaching impact on 72 distinct articles, the constitutional amendment of 2017

²⁴⁶ Kemal Gözler, *Elveda Anayasa: 16 Nisan 2017 Referandumunu ve Bu Referandumda Oylanan Anayasa Değişikliği Hakkında Makaleler* (Bursa: Ekin 2021), 45.

²⁴⁷ Decree Law on Taking Some Measures Under the State of Emergency Emergency no. 686, February 7, 2017, art. 1. “(1) Individuals who are members of, affiliated with, or have connections to, or contacts with, structures, formations, or groups determined by the National Security Council to be engaging in activities against the national security of the State, and who are listed in Annex (1), have been dismissed from public office without any further procedure. No notification shall be made to these individuals additionally. Proceedings against them shall also be conducted in accordance with the provisions of special laws. (2) Individuals dismissed from public office in accordance with the first paragraph shall have their ranks and/or positions revoked without the need for a conviction, and these individuals shall not be readmitted to the organization they served; they shall not be employed in public service again, directly or indirectly; and any trustee board, committee, commission, board of directors, supervisory board, liquidation board membership, and other duties they hold shall be considered terminated. Their firearm licenses, documents related to seafaring, and pilot licenses shall be revoked, and these individuals shall be evacuated from the public housing or foundation lodgings they occupy within fifteen days. These individuals cannot be founders, partners, or employees of private security companies. Relevant passport units shall be immediately notified by ministries and institutions regarding these individuals. Upon this notification, passports shall be canceled by the passport units.

(3) Those dismissed from public office within the scope of the first paragraph cannot use titles and professions such as ambassador, or governor, if they hold them, and cannot benefit from the rights provided based on these titles, qualifications, and professional titles.”

²⁴⁸ Gizem Sade, “15 Temmuz Darbe Girişimi Sonrasında Kaç Kişi Görevinden İhraç Edildi, Kaç Kişi Tutuklandı?” *Euronews*, July 15, 2020, <https://tr.euronews.com/2020/07/15/verilerle-15-temmuz-sonras-ve-ohal-sureci>.

²⁴⁹ Gözler, *Elveda Anayasa*, 133.

introduced a number of pivotal alterations to the Turkish political system²⁵⁰. The government's representatives advertised the system as a unique manifestation of the presidential system, commonly referred to as a "Turkish-style presidency" or "our own presidential system²⁵¹". Consequently, this has led to discussions over how to define the country's new political system. Although the system in question is quite different from the archetype presidential system of the United States, the ruling party was mistaken in thinking that they have created an authentic political system unique to Turkey, as will be seen below.

As a result of the amendment, the executive and legislative branches were separated, and the office of prime minister was abolished. The president is now elected by direct popular vote every five years by a majority vote and is eligible to serve two terms. Furthermore, the number of deputies has been augmented, rising from 550 to 600, while the minimum age for eligibility has been reduced from 25 to 18. Martial law and the jurisdiction of military courts have been abolished.

The president's powers are overly strengthened by the amended constitution. The president now appoints and dismisses an unspecified number of ministers and high-ranking bureaucrats without the need for parliamentary oversight or approval. The president also has the authority to issue presidential decrees covering a wide range of topics, including the creation of new ministries, the organization of local government, and many aspects of the economic and social sphere, except in matters related to fundamental rights and freedoms, or those areas already governed by existing legislation. It is important to note that these decrees are in effect until the parliament supersedes them with legislation.

Furthermore, the president has the power to reorganize all ministries and public institutions as desired, with the authority to decide whether to modify, abolish, or establish new ministry branches by presidential decrees. Additionally, the president has the power to declare a state of emergency with the approval of the parliament, allowing for the issuance of emergency presidential decrees, which may be used in arbitrary and prolonged ways. Another presidential prerogative is to dissolve the parliament, referred to as "renewing the elections", with the president and a three-fifths majority of deputies jointly possessing this power. Under this provision, the parliament is given the slimmest

²⁵⁰ Law Amending the Constitution of The Republic of Turkey no. 6771, February 11, 2017.

²⁵¹ Erdoğan made the following statement at a rally: "We do not necessarily have to get the system in the USA. We get honey from every flower with the skill of a bee. We build it according to our own traditions. This is the right moment for the presidential system. Those who oppose it only insult and slander. They say it is a dictatorship. These are all empty words." Ümit Çetin, "Paket Öyle De Böyle De Çıkacak," *Hürriyet*, February 21, 2015, <https://www.hurriyet.com.tr/gundem/paket-oyle-de-boyle-de-cikacak-28258399>.

chance to call for elections independently of the president. In connection with this provision, it is possible for the president to run for an election for the third term in a case where the parliament calls for early elections during the president's second term.

The structure of the Constitutional Court and the Council of Judges and Prosecutors (*Hakimler ve Savcılar Kurulu*, HSK) was also modified by the 2017 amendments. The number of members in the Constitutional Court has decreased from 17 to 15, and in the HSK from 22 to 13. The president appoints five members to the HSK, and the parliament elects another five, while the minister and deputy minister of justice are *ex officio* members of the Council. The HSK is the body in charge of regulating all aspects of the judicial system, including the appointment, promotion, discipline, and removal of judges and prosecutors as well as the creation, abolition, or modification of courts and their territorial jurisdictions. In essence, within a political system where the president and a parliamentary majority come from the same political party, this arrangement effectively denotes the judiciary's total subordination to a single political power.

The checks and balances mechanisms have also been considerably altered by the amendments, making it more difficult to check the president. Even before the 2017 amendments, the parliament had already played a diminished function; however, the broad authority of the president risks it becoming a mere rubber-stamp institution. While the parliament still has the right to pass laws, oversee the budget, and declare war, its oversight of the executive is limited. Although it is capable of submitting questions to vice presidents and ministers, it is particularly devoid of the power to address these questions directly to the president. Holding the president accountable through impeachment procedures has become exceedingly difficult. A parliamentary investigation may only be started with the support of 301 deputies in the 600-seat parliament. Subsequently, the parliament creates an investigation commission through the secret ballot of 360 deputies. For the president to stand trial at the Supreme Court, this requires the support of 400 deputies, and these requirements persist even after the president's term ends, implying a permanent immunity from responsibility for the president.

A crucial change is the elimination of the neutrality requirement for the president, which remained in effect until 2017. Even though President Erdoğan had endorsed the AKP since 2014, the 2017 amendments now allow presidents to formally assume leadership roles within their respective parties. The President Erdoğan, who had served as prime minister from 2003 to 2014 and held the presidency since 2014, concurrently

assumed the position of leader within the AKP. This illustrates that the novel political system is designed to revolve around the harmonious integration of the president, the political party, and the state²⁵².

In any case, the 2017 amendments brought about considerable changes to the Turkish political system. With limited checks in place, the President solidified his power by securing the elections of 2018 and 2023, wielding direct control over the parliamentary majority. As a result, in their role as the leader of a political party, the president possesses the authority to determine the selection of parliamentary candidates, thereby exerting significant influence over the parliament.

In a political system that already produced a weakened checks and balances mechanism, the president's control over a parliamentary majority has made their oversight nearly impossible. Consequently, the only entity capable of checking the president is the parliamentary opposition. As will be demonstrated in the following sections, the establishment of a hyper-presidential system in Turkey played a significant role in diminishing both parliamentary opposition and civil dissent within the framework of the checks and balances mechanism.

²⁵² Zafer Yılmaz, "Erdoğan's Presidential Regime and Strategic Legalism: Turkish Democracy in Twilight Zone," *Southeast European and Black Sea Studies* 20, no. 2 (2020): 266. <https://doi.org/10.1080/14683857.2020.1745418>.

CHAPTER 3

3 PARLIAMENTARY OPPOSITION

3.1 Contributing Factors to Ensure Parliamentary Majority

It is a constitutional principle in Turkey that parliamentary elections should be held according to the principles of fair representation and stability of government²⁵³. However, this goal has not been consistently met. Turkey's electoral structure has been radically changed many times since multiparty politics started in the 1950s, with several other reforms made at intervals. Several governments have faced criticism for producing outcomes that exhibit bias towards the ruling party, thereby marginalizing the opposition and diminishing its influence. This pattern has been connected to the party system's ongoing fragmentation, which has increased political instability and produced a string of weak coalition governments. Politicians typically choose between various systems based more on how it would affect their party's chances of winning elections than on democratic principles²⁵⁴.

Nevertheless, despite the shift away from the parliamentary system in 2017, certain regulations governing parliamentary elections persisted, while others underwent modifications. The retention of some pre-2017 rules raises concerns in a system where the executive is not derived from the parliament. Specifically, these rules, coupled with a commitment to the principle of stability of government, continue to necessitate a stable parliament in a context where the president is directly elected by the people. This dynamic potentially opens the door for both the president and the parliament to emerge from the same political party, creating a united system, unlike the distinct relationship between the executive and legislative branches observed in the United States. In the course of this investigation into the role of the opposition in Turkey's new system, it is imperative to explore how the parliament is constituted and how the parliamentary majority aligns with the president. To achieve this, a comprehensive analysis of electoral and political party laws is warranted.

3.1.1 Electoral Legislation

Since 1961, Turkey has predominantly employed a proportional representation system, except for the 1965 elections, utilizing the d'Hondt method. This electoral framework accommodates multipartyism alongside an established electoral threshold for

²⁵³ Turkish Constitution, art. 67/6. "The electoral laws shall be drawn up so as to reconcile the principles of fair representation and stability of government."

²⁵⁴ William Hale, "The Electoral System and the 2007 Elections: Effects and Debates," *Turkish Studies* 9, no. 2 (2008): 233-234. <https://doi.org/10.1080/14683840802011993>.

parliamentary elections²⁵⁵. In March 2022, pivotal amendments were introduced to the electoral legal framework through legislation proposed by the ruling party and its political ally. These modifications encompass a reduction in the electoral threshold, a revised methodology for seat allocation, adjustments to the eligibility criteria for political parties, and the implementation of a novel method for selecting members of mid-level electoral councils through a lottery system²⁵⁶. This examination will encompass both the existing regulations that persist in facilitating the formation of a friendly parliamentary majority and the rules implemented after the constitutional amendments of 2017.

3.1.1.1 Electoral Threshold

The 10 percent national electoral threshold²⁵⁷ used to be the most contentious characteristic of Turkey's electoral system since it was significantly higher than that used in any consolidated democracy. Predictably, only minority groups had been vocal in their opposition to the 10 percent threshold. On the contrary, opponents of a high threshold claimed that if it were eliminated or greatly diminished, the breakdown of the party system would worsen, resulting in a weak and divided government²⁵⁸.

The democratic credibility of a 10 percent threshold was put to the test in 1995, when an appeal was filed with the Constitutional Court, arguing that it violated Article 67 of the Constitution. The Court asserted that electoral thresholds do not inherently violate constitutional principles, affirming the 10 percent requirement as supportive of the stability of government and fair representation²⁵⁹. However, the Parliamentary Assembly of the Council of Europe (CoE) passed a resolution in June 2004 criticizing the 10 percent threshold as “excessive” and encouraging Turkey to lower it, but the resolution had no legal force²⁶⁰.

In 2006, the ECtHR ruled on a case involving former candidates of the pro-Kurdish Democratic People's Party (*Demokratik Halk Partisi*, DEHAP), Mehmet Yumak and Resul Sadak, who contested their exclusion from parliamentary seats in the 2002

²⁵⁵ Şebnem Gümüşçü, “The Emerging Predominant Party System in Turkey,” *Government and Opposition* 48, no. 2 (April 2013): 229.

²⁵⁶ OSCE, *Republic of Türkiye, General Elections 14 May and Presidential Election, Second Round 28 May 2023, ODIHR Election Observation Mission Final Report* (Warsaw: September 29, 2023), 7.

²⁵⁷ Law on Deputy Elections no. 2839, June 13, 1983, art. 33/1 (amended). “Parties that do not exceed ten percent of the valid votes throughout the country in general elections and in all constituencies in by-elections cannot be elected as members of parliament.”

²⁵⁸ Hale, “The Electoral System and the 2007 Elections,” 236-237.

²⁵⁹ Turkish Constitutional Court, E. 1995/54 K. 1995/59, November 18, 1995, 14-15.

²⁶⁰ Council of Europe Parliamentary Assembly, Recommendation 1662 (2004) Honouring of Obligations and Commitments by Turkey Recommendation (Adopted by the Assembly on 22 June 2004 at the 19th sitting).

elections due to the 10 percent threshold rule. They claimed that this violated Turkey's obligations under Article 3 of Protocol 1 of the European Convention on Human Rights, which states that "*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*"²⁶¹. The ECtHR's Grand Chamber determined that while the Convention guarantees individual electoral rights²⁶², it does not prescribe specific electoral systems, such as proportional representation²⁶³, thus validating the legality of the 10 percent threshold²⁶⁴.

The 2002 elections, pivotal in the context of the AKP's ascent to power, highlighted the consequences of the 10 percent threshold, wherein significant portions of the electorate's votes failed to translate into parliamentary representation, underscoring a lack of representational justice²⁶⁵.

The reduction of the electoral threshold from 10 percent to 7 percent via an amendment to the Law on Parliamentary Elections on March 31, 2022, marks a notable shift. Notably, since the executive in Turkey no longer emerges from within the parliament, the threshold for parliamentary elections has no direct relationship with the stability of the government. The only reason for thresholds, which are rarely found in presidential regimes²⁶⁶, may be to regulate legislative activities. However, even within this context, a threshold set at 7 percent seems excessive and lacks a clear justification for promoting the stability of the government. Moreover, the imposition of a threshold inherently diminishes representation, exacerbating the issue when coupled with the d'Hondt system, which intrinsically favors stability over representation.

Contrastingly, the absence of an electoral threshold in the United States Congress differs from the practice in presidential systems like Argentina²⁶⁷, Brazil²⁶⁸, and the

²⁶¹ ECtHR, *Yumak and Sadak v. Turkey*, Appl. No. 10226/03, July 8, 2008, para. 16, 77.

²⁶² ECtHR, *Yumak and Sadak v. Turkey*, Appl. No. 10226/03, July 8, 2008, para. 108.

²⁶³ ECtHR, *Yumak and Sadak v. Turkey*, Appl. No. 10226/03, July 8, 2008, para. 110.

²⁶⁴ ECtHR, *Yumak and Sadak v. Turkey*, Appl. No. 10226/03, July 8, 2008, para. 147.

²⁶⁵ Ayşe Erkmen, "Türkiye'de 1950 ile 2002 Yılları Arasında Uygulanan Genel Seçim Sistemlerinin Halk İradesine Etkisi," *Gaziantep University Journal of Social Sciences* 17, no. 3 (2018): 1244. <https://doi.org/10.21547/jss.395575>.

²⁶⁶ Tolga Şirin, "Başkanlık Rejiminde "Seçim Barajı" Anlamsız: Yüzde 7 Barajı Anayasaya Aykırı," *T24*, September 7, 2021, <https://t24.com.tr/yazarlar/tolga-sirin/baskanlik-rejiminde-secim-baraji-anlamsiz-yuzde-7-baraji-anayasa-ya-aykiri,32376>.

²⁶⁷ "Political Database of the Americas: Republic of Argentina Electoral System," *Georgetown University*, <https://pdpa.georgetown.edu/ElecSys/Argentina/argentina.html>.

²⁶⁸ "Political Database of the Americas: Federative Republic of Brazil Electoral System," *Georgetown University*, <https://pdpa.georgetown.edu/ElecSys/Brazil/brazil.html>.

Dominican Republic²⁶⁹, where thresholds exist but are comparatively lower. Accordingly, almost 90 percent of American states do not have a legislative threshold²⁷⁰.

The high electoral threshold in Turkey, with the concurrent elections, appears designed to consolidate executive dominance by aligning the majority party with the presidency, potentially marginalizing the opposition, and facilitating executive overreach into legislative affairs.

3.1.1.2 Pre-electoral Alliances

Pre-electoral alliances are significantly important, as they are quite common and can substantially influence elections and policy outcomes²⁷¹. With the change in the political system in Turkey, pre-electoral alliances have become an important issue as well in the politics of Turkey. Although they are referred to by different terms in the literature²⁷², this study adopts the term “pre-electoral alliance”.

According to Golder’s definition, “*a pre-electoral alliance exists when multiple parties choose to coordinate their electoral strategies rather than run for office alone*”²⁷³. Such alliances are likely to be formed in countries where the electoral systems are disproportionate with large numbers of parties²⁷⁴.

Bandyopadhyay et al.’s working paper identifies three main reasons for parties to form pre-electoral alliances: to determine the government formation after the elections, manipulate bargaining power, and prevent splitting the votes²⁷⁵. Additionally, pre-electoral alliances affect voters’ behavior, especially in countries with electoral thresholds, where voters perceive their votes as more impactful when they participate in alliances²⁷⁶.

In parliamentary systems, pre-electoral alliances can be useful mechanisms to avoid a government formation crisis. In presidential systems, pre-electoral alliances emerge in two ways: in presidential elections and parliamentary elections. In presidential elections, when a majority vote is required, it is difficult for a single party’s candidate to

²⁶⁹ “Political Database of the Americas: Dominican Republic Electoral System,” *Georgetown University*, <https://pdba.georgetown.edu/ElecSys/DomRep/domrep.html>.

²⁷⁰ Şirin, “Başkanlık Rejiminde “Seçim Barajı” Anlamsız”.

²⁷¹ Sona N. Golder, “Pre-electoral Coalitions in Comparative Perspective: A Test of Existing Hypothesis,” *Electoral Studies* 24, no. 4 (December 2005). <https://doi.org/10.1016/j.electstud.2005.01.007>.

²⁷² Some of these terms are electoral alliance, pre-electoral coalition, linked parties, apparentement, pre-electoral pacts...

²⁷³ Sona Nadenichek Golder, “Pre-electoral Coalition Formation in Parliamentary Democracies,” *British Journal of Political Science* 36, no. 2 (2006): 195. doi:10.1017/ S0007123406000123.

²⁷⁴ Golder, “Pre-electoral Coalitions in Comparative Perspective,” 659.

²⁷⁵ Siddhartha Bandyopadhyay, Kalyan Chatterjee, and Tomas Sjöström, “Working Paper on Pre-electoral Coalitions and Post-election Bargaining,” 2009-08 *Rutgers University* (September 15, 2009): 3.

²⁷⁶ Nebi Miş and Hazal Duran, “Analiz: Seçim İttifakları,” *Seta* 232 (February 2018): 12.

achieve this, so parties want to achieve this office through alliances. In pre-electoral alliances in parliamentary elections, parties try to put forward a more effective form of power or opposition by joining forces. While seemingly distinct, alliances in presidential and parliamentary elections often intersect, impacting each other's outcomes. In presidential systems, especially when the elections are concurrent, the formation of pre-electoral alliances is seen as an opportunity for small parties to exist in the system and overcome the threshold problem²⁷⁷.

In Turkey, pre-electoral alliances were previously prohibited by law²⁷⁸. However, Law No. 7102, enacted on March 13, 2018, amended electoral regulations²⁷⁹, legalizing pre-electoral alliances. Notably, the proposal for this law came from the government, which distinguishes Turkey from other examples. According to Oğuz, the search for an alliance should have come from the opposition rather than the ruling party, which had been in power for 16 years at that time²⁸⁰. It was believed that the *İyi Parti* (İP), comprising deputies who broke away from the MHP would divert votes from it, potentially preventing it from surpassing the electoral threshold and securing parliamentary seats. This arrangement was important to the ruling party which needed the MHP to access the majority in parliament and support the AKP's presidential candidate. Similarly, for the 2018 elections, the CHP, the İP, and the *Saadet Partisi* came together and agreed to enter the elections under the "Nation Alliance". Despite their concerted efforts, the opposition alliance failed, and the People's Alliance was successful both in parliament and in the presidential election.

The amended rules enable minor parties within alliances to secure seats if the alliance surpasses the electoral threshold. Additionally, seat allocation is based on the total votes of the alliance. The total number of deputies obtained by the entire pre-electoral alliance is determined first, and then this number is distributed among the political parties forming the alliance based on the number of valid votes they received²⁸¹.

²⁷⁷ Miş and Duran, "Seçim İttifakları," 10.

²⁷⁸ Law on Political Parties no. 2820, April 24, 1983, art. 90/2 (amended) "The political parties cannot engage in activities outside of their bylaws and programs, nor can they decide to support another party in elections."

²⁷⁹ Law on the Basic Provisions of Elections and Voter Registers no. 298, May 2, 1961; Law on Political Parties no. 2820, April 24, 1983; Law on Deputy Elections no. 2839, June 13, 1983.

²⁸⁰ Mustafa Cem Oğuz, "Seçimlerin, Demokratikleşme Sürecine Etkileri: Seçim İttifakları ve Türkiye Üzerine Bir Tartışma," *Memleket Siyaset Yönetim* 31, no. 1 (2019): 114-115.

²⁸¹ Law on the Basic Provisions of Elections and Voter Registers no. 298, May 2, 1961, art. 108/4-15-16. "In the consolidation minutes to be organized by the district election board: (Added: 13/3/2018-7102/13 art.) The total number of votes received by each alliance, (Added: 13/3/2018-7102/13 art.) The number of votes received individually by each political party within the alliance, obtained by adding the share of votes from the alliance's common votes, are written in figures and words."

In this way, minor parties in an alliance that receive fewer votes could make a positive contribution to the number of deputies to be elected by the alliance. For instance, in the 2018 elections in Trabzon, the MHP received 13.5 percent of the vote while the İP received 11.2 percent, but the MHP was unable to secure a deputy while the İP was able to secure one deputy. The fact that the İP secured a seat despite receiving fewer votes than the MHP highlights the impact of residual votes within alliances²⁸².

In the 2019 local elections, parties formed pre-electoral alliances without a legal framework. The AKP and the MHP formed the People's Alliance, while the CHP and the İP formed the Nation Alliance. Despite not being directly part of the Nation Alliance, the HDP supported it by not fielding candidates in certain electoral contests²⁸³. As a result of the elections, the Nation Alliance came in first in 21 provinces, 11 of which were metropolises. The most striking element of the results was that the People's Alliance lost five metropolitan municipalities, including İstanbul and Ankara, to the Nation Alliance. Although the results do not indicate a significant change in terms of the number of provinces won, considering the population and the economies of the provinces in which the Nation Alliance won, it is a clear success for the opposition. Following dissatisfaction with the results, the İstanbul election was annulled, leading to a re-run on June 23, 2019, where the candidate of the Nation Alliance secured victory once again²⁸⁴.

The electoral rules were amended again in 2022 by the deputies of the ruling party and its political ally, who argued that the previous seat allocation rules were unfair. As mentioned above, the electoral threshold is decreased to 7 percent, and the seat allocation is amended in a way that could potentially disadvantage opposition alliances²⁸⁵. The revised seat allocation method employs the d'Hondt method to directly assign seats to individual parties, even when operating within an alliance. This adjustment introduces the possibility of placing smaller parties at a disadvantage within alliances²⁸⁶. Kanadoğlu commented on the amendment to the electoral law as “*the expansion of the Nation Alliance and the possibility of increasing the proportion of residual votes within the alliance may have necessitated this change for the AKP and MHP*”²⁸⁷.

²⁸² Tansu Pişkin, “Seçim Yasası Değişikliği İttifak Sisteminin İçini Boşaltıyor,” *Bianet*, April 5, 2022, <https://m.bianet.org/bianet/siyaset/260051-secim-yasasi-degisikligi-ittifak-sisteminin-icini-bosaltiyor>.

²⁸³ Hazal Duran and Nebi Miş, “İttifaktan Blok Siyasetine: 31 Mart Yerel Seçimleri,” *Adam Academy Journal of Social Sciences* 9, no. 2 (2019). <https://doi.org/10.31679/adamakademi.634750>.

²⁸⁴ Oğuz, “Seçimlerin, Demokratikleşme Sürecine Etkileri,” 115.

²⁸⁵ Law on Amendments to the Law on Deputy Elections and Some Other Laws no 7393, March 31, 2022.

²⁸⁶ OSCE, *Republic of Türkiye, General Elections 14 May*, 8-9.

²⁸⁷ Pişkin, “Seçim Yasası Değişikliği İttifak Sisteminin İçini Boşaltıyor”.

3.1.1.3 Election Administration

Aside from electoral systems, election administration is critical for the realization of democracy. For elections to be considered “free” and “fair,” electoral bodies and entities tasked with and empowered with the administration and/or oversight of elections must follow specific requirements. “Independence” and “impartiality” are two features of electoral bodies that stand out. The term independence refers to the fact that the electoral body operates autonomously from the legislative and executive branches, is not subject to their authority, and does not receive orders from them. Impartiality implies that the electoral body is neutral toward all political parties competing in the election and maintains an equal distance. It further implies that the electoral body does not function partisanly in its judgments, procedures, and practices²⁸⁸.

In Turkey, the Constitution grants the YSK a wide range of powers and duties, including the authority to conduct and oversee all procedures related to the administration of elections. Pursuant to Article 79 of the Constitution, the YSK is composed of eleven members, six of whom are elected by the General Board of the Court of Cassation and five by the General Board of the Council of State from among their own members. However, the YSK exemplifies the potential politicization of independent boards in Turkey, raising concerns about the independence of its decisions since 2017.

In Turkey’s electoral practice, all stakeholders can appeal lower electoral board decisions to higher boards, all the way up to the YSK²⁸⁹. Notably, the YSK decisions, including those that may violate constitutionally protected rights and the decision on the final results, are not subject to judicial review²⁹⁰. The Constitutional Court ruled in 2015 that the constitutional provision²⁹¹ specifying that YSK decisions are final and not subject to judicial review also precludes individual appeals to the Constitutional Court for alleged violations of fundamental rights and freedoms²⁹². This places the election process and its

²⁸⁸ Levent Gönenç, “Uluslararası Standartlar Işığında Seçim Organlarının Oluşumu ve Nitelikleri,” *Zabunoğlu Armağanı* (2011), 335.

²⁸⁹ Law on the Basic Provisions of Elections and Voter Registers no. 298, May 2, 1961, art. 110. “Citizens who are eligible to vote, political parties or the heads or deputies of their organizational levels according to their statutes, observers, candidates, members of the Senate of the Republic and deputies may object to the imprecise decisions of the boards or board presidents specified in this law.”

²⁹⁰ Law on the Basic Provisions of Elections and Voter Registers no. 298, May 2, 1961, art. 111. “In this law, the higher board to which each board is affiliated is the authority of objection against the decisions of the boards that are not written as final.

The decisions of the Supreme Election Board, ex officio or upon objection, are final.”

²⁹¹ Turkish Constitution, art. 79/2. “The Supreme Board of Election shall execute all the functions to ensure the fair and orderly conduct of elections from the beginning to the end, carry out investigations and take final decisions, during and after the elections, on all irregularities, complaints and objections concerning the electoral matters, and receive the electoral records of the members of the Grand National Assembly of Turkey and presidential election. No appeal shall be made to any authority against the decisions of the Supreme Board of Election.”

²⁹² Turkish Constitutional Court, *Vatan Partisi*, 2015/8764, November 18, 2015.

outcomes to the control of an administrative body, challenging the constitutionally guaranteed separation of powers and international good practice, as well as paragraph 5.10 of the 1990 OSCE Copenhagen Document²⁹³. To ensure respect for human rights and legal integrity, paragraph 5.10 specifies that everyone will have an effective means of redress against administrative decisions²⁹⁴. States are obliged under Article 2.3(a) of the ICCPR to ensure that any person whose rights or freedoms, as described in the Covenant, are violated has an effective remedy, regardless of whether the violation was committed by persons acting in an official capacity. According to the Code of Good Practice on Referendums, the referendum appeal body should be either an electoral commission or a court. A final appeal to a court must be necessary for any situation²⁹⁵.

The issue of the YSK's independence gained prominence in 2017 following a restructuring that saw eight of its eleven members replaced. The reconstitution of the YSK in 2016, with eight new members elected by the General Boards of the Court of Cassation and the Council of State, altered its composition significantly. Only three members of the YSK were elected before 2016 and remained in office. This restructuring, mandated by Law No. 6723, dated July 1, 2016, underscores the relationship between the composition of the YSK and the independence of the bodies responsible for electing its members. Again, pursuant to paragraph 10 of the provisional Article 27 added to the Council of State Law No. 2575 by Article 12 of Law No. 6723 and paragraph 9 of the provisional Article 15 added to the Court of Cassation Law No. 2797 by Article 22 of Law No. 6723, the membership of the YSK was automatically terminated for the members of the Court of Cassation and Council of State whose terms of office expired. The General Boards of the Court of Cassation and Council of State, which convened with a new membership structure, elected eight new members to the YSK, and these members took office on September 8, 2016. Upon the resignation of one of these eight members on October 18, 2017, a new member was elected on October 23, 2017, and upon the resignation of the

²⁹³ OSCE, *Republic of Turkey Constitutional Referendum*, 19.

²⁹⁴ OSCE, *Copenhagen Document*, Para. 5.10. "They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

— everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;"

²⁹⁵ Venice Commission, *Revised Code of Good Practice on Referendums*, point II.4.3.a. "The appeal body in referendum matters should be impartial and independent, endowed with the necessary powers of cognition and decision to afford an effective remedy, established by law and bound to apply the law, with limited discretion. A final appeal to a court of law is the preferred option in most Council of Europe member states."

other member on September 10, 2018, a new member was elected on September 11, 2018²⁹⁶.

Several notable instances, including the YSK's decisions regarding the 2017 referendum²⁹⁷ and the annulment of the İstanbul municipal elections in March 2019, have sparked controversies and raised questions about the YSK's impartiality and adherence to democratic principles. On March 31, 2019, the CHP candidate Ekrem İmamoğlu won the İstanbul municipal election, however, upon the AKP's application, the YSK decided to cancel and renew the election. On June 23, İmamoğlu won the re-election with a bigger margin this time.

Another contentious issue pertains to the candidacy of ministers as deputy candidates in the 2023 elections. A total of 16 ministers and a vice president were nominated as deputy candidates from the AKP lists. This action encountered contention from numerous constitutional jurists who argue that ministers cannot pursue parliamentary seats without resigning from their ministerial posts. Despite the objections raised, the YSK validated their candidacies²⁹⁸. It has been contended that ministers fall within the scope of "*other public employees not regarded as laborers*" pursuant to Article 76/3 of the Constitution and are therefore ineligible to contest parliamentary seats without resigning²⁹⁹. According to the Constitution, ministers are prohibited from serving as deputies³⁰⁰. The simultaneous fulfillment of two distinct duties presents inherent challenges, similarly, manifesting when an individual holding one duty seeks candidacy for another. This situation became notably unusual when the presidential election went to a second round. Ministers who were elected as deputies remained in their ministerial positions until the conclusion of the second round. The President did not appoint new ministers for this two-week period. Therefore, the legislative and executive branches became fused within the same individuals. A "practical" decision was taken that the

²⁹⁶ Gözler, "Hukukun Siyasetle İmtihanı".

²⁹⁷ Yüksek Seçim Kurulu Kararı Karar No. 560, <https://www.ysk.gov.tr/doc/karar/dosya/5059/2017-560.pdf>.

²⁹⁸ "Turkey's Election Board Says Ministers Don't Have to Resign to be Deputy Candidates," *Duvar English*, April 19, 2023, <https://www.duvarenglish.com/turkeys-election-board-says-ministers-dont-have-to-resign-to-be-deputy-candidates-news-62235>.

²⁹⁹ "Hukuka Uygun Davranmak Bu Kadar Zor mu?" *Politik Yol*, April 2, 2023, <https://www.politikyol.com/hukuka-uygun-davranmak-bu-kadar-mi-zor/>; "Bakanlar Milletvekili Adaylığı İçin Görevlerinden Ayrılmalı Mıdır?" *Politik Yol*, March 30, 2023, <https://www.politikyol.com/bakanlar-milletvekili-adayligi-icin-gorevlerinden-ayrilmali-midir/>; Tolga Şirin, "Milletvekili Olanların Bakanlıkları Düştü," *T24*, May 19, 2023, <https://t24.com.tr/yazarlar/tolga-sirin/milletvekili-olanlarin-bakanliklari-dustu,40067>.

³⁰⁰ Turkish Constitution, art. 106/4. "Vice-Presidents of the Republic and ministers shall be appointed from among those eligible to be elected as deputies and dismissed by the President of the Republic. Vice-Presidents of the Republic and ministers shall take their oaths before the Grand National Assembly of Turkey, as written in Article 81. If members of the Grand National Assembly of Turkey are appointed as Vice-Presidents of the Republic or ministers, their parliamentary membership shall cease."

ministers would not take the oath of office until the second round of presidential elections and would work as ministers³⁰¹. This arrangement undermined the separation of powers between the executive and legislative branches, a fundamental characteristic of the presidential system. It is worth noting that in the United States, the president's secretaries are ineligible to be members of the legislature. This example highlights concerns about the potential use of state resources in a manner that could favor the ruling party during the election period. As will be analyzed in more detail below, it also raises questions about the effectiveness of existing institutions in providing checks and balances on executive decisions.

In essence, the independence of the YSK relies on the independence of the Court of Cassation and the Council of State, which, in turn, depends on the independence of the HSK. Unfortunately, the independence of the HSK is very controversial in Turkey, thereby complicating the autonomy of the YSK. This interdependence highlights the challenges to institutional independence within the Turkish electoral framework.

In countries where the electoral administration is not independent and impartial vis-à-vis the political power, it is obvious that decisions will be made in favor of the president's party, resulting in an uneven playing field. Nicaragua provides another relevant example, where electoral reforms enacted in 2021 curtailed international observation, erected barriers for opposition candidates, and tilted the Supreme Electoral Council in favor of the incumbent government, culminating in Daniel Ortega's re-election for a fourth consecutive term³⁰².

The politicization of the election administration significantly contributes to an uneven playing field in Turkey. The removal of the YSK's independence and impartiality effectively undermines the opposition's opportunity to compete fairly and equally which makes it much easier for the incumbent party to maintain its position.

3.1.1.4 Concurrent Elections

One of the most necessary ways for a president to achieve a friendly majority is to hold presidential and parliamentary elections concurrently. According to Samuels and Shugart, concurrent elections encourage voters to see the presidential and parliamentary candidates as members of the same team and therefore vote accordingly³⁰³. Shugart

³⁰¹ Şirin, "Milletvekili Olanların Bakanlıkları Düştü".

³⁰² Florian Kriener, Gabriel Álvarez Argüello and Alina Maria Ripplinger, "Nicaragua's Electoral Counter-Reform," *Verfassungsblog*, June 9, 2021, <https://verfassungsblog.de/nicaraguas-electoral-counter-reform/>.

³⁰³ David J. Samuels and Matthew S. Shugart, *Presidents, Parties and Prime Ministers: How the Separation of Power Affects Party Organization and Behavior* (Cambridge: Cambridge University Press, 2010), 129.

argues that when elections are concurrent, it is rare for the opposition to have a majority³⁰⁴.

Turkey's 2017 constitutional amendments stipulated that presidential and parliamentary elections be held on the same day, as outlined in Article 77. Consequently, this constitutional rule implies that parliament's composition aligns with the majority desired by the president. The concurrent elections, coupled with the president's active involvement in the elections as the leader of their political party, consolidate effective control over both the legislative and executive branches. Gözler stresses that such a scenario engenders a "fusion of powers", contravening the inherent separation of powers fundamental to the presidential system. Consequently, it is incompatible with both the presidential and parliamentary systems, as it undermines the essential features of each³⁰⁵.

In contrast, in the United States, the House of Representatives undergoes elections every two years³⁰⁶. The Senate, which represents each state with two members for six years, renews its composition through staggered elections held every two years, with one-third of its members elected at each interval³⁰⁷. This arrangement ensures periodic turnover in legislative representation, reflective of diverse electoral mechanisms occurring at different intervals. Presidential elections are held every four years, and each president is only eligible to run for a maximum of two terms. When the US system is analyzed, where there are no concurrent elections, it is witnessed that 48 unified and 38 divided governments have been established since 1857³⁰⁸.

Similarly, in Argentina, deputies³⁰⁹ and the president serve four-year terms³¹⁰, with the Chamber of Deputies undergoing renewal every two years by half and senators

³⁰⁴ Matthew Soberg Shugart, "The Electoral Cycle and Institutional Sources of Divided Presidential Government," *The American Political Science Review* 89, no. 2 (June 1995): 328.

³⁰⁵ Gözler, *Elveda Anayasa*, 28-30.

³⁰⁶ US Constitution, art. I, sec. 2. "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

³⁰⁷ US Constitution, art. I, sec. 3. "The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote."

³⁰⁸ "Party Government Since 18571," *History, Art and Archives: United States House of Representatives*, <https://history.house.gov/Institution/Presidents-Coinciding/Party-Government/>.

³⁰⁹ Constitution of Argentina, art. 50. "Deputies shall serve in their representation for four years, and may be re-elected, but the Chamber shall be renewed by half every two years; to this end, those named for the first legislature, as soon as they meet, shall draw lots [to determine] who must leave after the first period."

³¹⁰ Constitution of Argentina, art. 90. "The President and Vice President shall remain in office for a term of four years and may be reelected or succeed each other for only one consecutive term. If they have been reelected or succeeded each other, they may not be elected to either office, except after the interval of a term."

serving six-year terms, with one-third of the Senate renewed every two years³¹¹. Notably, Colombia, El Salvador, and Venezuela opt not to conduct concurrent elections.

In Latin American presidential systems, Brazil, Costa Rica, Chile, the Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay hold concurrent elections³¹². In each of these countries, however, it is erroneous to assume that presidents have a parliamentary or congressional majority. Certain countries, like Bolivia, the Dominican Republic, Honduras, Mexico, and Paraguay, often witness the president's party or coalition dominating the parliament. Nevertheless, the contrasting outcomes of concurrent elections necessitate a nuanced analysis of each country's unique circumstances.

As mentioned above, with the regulations made under the new system, the presidential candidates, who are party leaders, have the opportunity to determine the parliamentary candidates and influence the majority of the parliament of Turkey. In the event of an inharmonious parliament, the president retains the authority to dissolve the parliament³¹³, as will be analyzed later in this chapter.

3.1.2 Political Party System

Özsoy Boyunsuz contends that an apparent correlation exists between political party systems and political systems, constituting fundamental dynamics within political institutions³¹⁴. In this respect, it is necessary to examine political party systems in order to better analyze political parties and the majority party with their relationship with the president.

Political parties are essential to the operation of political opposition in representative democracies. According to Sartori, political parties are tools for governing a pluralistic society and institutionalizing dissent³¹⁵.

Different authors have adopted different methods in terms of political party classifications. Duverger stands out as the pioneer among authors who categorized party systems based on the number of political parties and, in many respects, the most influential in the subsequent literature. In his work "Political Parties", Duverger

³¹¹ Constitution of Argentina, art. 56. "Senators serve six years in the exercise of their office and may be re-elected indefinitely; but the Senate shall renew itself by one-third of the electoral districts every two years."

³¹² In states with two chambers, only the lower chamber is taken into account.

³¹³ Bayram Doğan and Ali Fuat Geyik, "Cumhurbaşkanlığı Hükümet Sisteminde Kuvvetler Ayrılığı İlkesi," *Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi* 10, no. 2 (2020): 32.

³¹⁴ Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 14-15.

³¹⁵ Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis* (Colchester: ECPR Press, 2005), 58.

delineates the relationship between the political party system, including factors such as the number of parties, their respective sizes, alliances, geographical localization, and political distribution³¹⁶. Accordingly, political party systems can basically be classified as one-party, two-party, and multi-party systems³¹⁷.

Jean Blondel further refined Duverger's observations and classifications, partly reclassifying them into subcategories. Blondel suggests that party structures can be determined based on factors such as the number of parties, their strength, ideological positions, the essence of their support, organizational structures, and leadership styles. Within the context of Western liberal democracies, Blondel argues that party systems can be analyzed based on the first three of these criteria³¹⁸.

Giovanni Sartori expanded upon Duverger and Blondel's frameworks, examining not only the number of parties but also the relative sizes of political parties in relation to each other and the degree of fracture and polarization within the political structure. Sartori introduces a nuanced classification of party systems, moving beyond the traditional three-party categorization to encompass seven distinct types.

In his analysis, Sartori adopts an approach to counting parties, focusing primarily on parties wielding a high level of influence within the political landscape. He argues that parties in parliament must have either "coalition potential" or "blackmail potential" in order to be included in the party system³¹⁹. Irrespective of a party's size, if it possesses the capacity to determine at least one of the possible government majorities, it merits recognition as a party with coalition potential. Nonetheless, anti-system parties, despite their relative proportions, remain excluded from the purview of possible coalition partners by major political entities, thus occupying permanent oppositional stances.

Sartori clarifies this by referencing Italy and France, where Communist parties, despite garnering substantial electoral support, have exhibited virtually negligible coalition potential over the past twenty-five years (as of the time of his exposition). Nevertheless, disregarding such parties would be erroneous. Consequently, a secondary categorization emerges, delineating opposition-oriented parties empowered with coercive influence, or what Sartori terms "blackmail potential". According to Sartori, if a party's mere presence or emergence forces shift in the strategic maneuvers of government-aligned factions, altering the trajectory of competition, the party earns the designation of

³¹⁶ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (London: Methuen & Co. Ltd, 1951), 203.

³¹⁷ Duverger, *Political Parties*, 203-280.

³¹⁸ Jean Blondel, "Party Systems and Patterns of Government in Western Democracies," *Canadian Journal of Political Science / Revue Canadienne de Science Politique* 1, no. 2 (June 1968): 183-184.

³¹⁹ Sartori, *Parties and Party Systems*, 107-109.

possessing blackmail potential³²⁰. Sartori underlines that, in practice, the concept of the blackmail party essentially coincides with the concept of the anti-system party³²¹. In conclusion, after these explanations, Sartori's seven political party systems are as follows³²²:

1. one party
2. hegemonic party
3. predominant party
4. two-party
5. limited pluralism
6. extreme pluralism
7. atomized

Using Sartori's parameters, Hamdemir and Çelik³²³, proposed the party systems in Turkey in their study named "*Türkiye'de Parti Sistemleri*" (Party Systems in Turkey). Despite their comprehensive analysis spanning from the 1950 elections to the 2015 elections, I have elected to narrow the scope of the investigation to the elections in which the AKP participate. Additionally, I have incorporated the results of the 2018 and 2023 elections, which transpired subsequent to the conclusion of their study.

The party system in Turkey experienced radical transformation due to the economic and social-political crises of the 1999-2002 coalition period. Sayari characterizes the party system spanning from 1991 to 2002 as typified by high levels of fragmentation and polarization, government instability, dispersion of political power, and short-lived coalitions³²⁴. All parties that secured seats in the parliament during the 1999 elections were subsequently precluded from participation in the succeeding parliamentary session. In the 2002 general elections, the CHP, which fell under the threshold in the 1999 elections, and the AKP, which was founded under the leadership of the innovative wing of the *Milli Görüş* (National Vision) and participated by many politicians from the center-right, passed the threshold and entered the parliament. In this period, although there were two parties in the parliament, the votes of these two parties were not close to each other, and the total votes were not 90 percent or more. Therefore, the party system in this period is not Blondel's classic two-party system. Although it can be seen as a two-party system in terms of number, it should be noted that this is due to the electoral system. In other

³²⁰ Sartori, *Parties and Party Systems*, 108.

³²¹ Sartori, *Parties and Party Systems*, 109.

³²² Sartori, *Parties and Party Systems*, 110.

³²³ Berkan Hamdemir and Adem Çelik, "Türkiye'de Parti Sistemleri," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 67, no. 4 (2018).

³²⁴ Sabri Sayari, "Towards a New Turkish Party System?" *Turkish Studies* 8, no. 2 (2007): 203-204.

words, if there were a more reasonable electoral threshold of 5 percent instead of a high threshold of 10 percent, a total of seven political parties would enter parliament, and coalitions would be in question³²⁵. If DEHAP was evaluated as an anti-system party without the potential to blackmail, then a six-party system would be mentioned, with four more parties with coalition potential apart from the two big parties. According to Sartori's criteria, the party system during this period was a "limited pluralist multi-party system", but the 10 percent electoral threshold prevented this, resulting in an artificial party system³²⁶.

In the process that started in 2002 and continued until today, in all seven general elections held, the AKP came first. The AKP's average vote rate in seven elections is 42.76 percent. The CHP, which entered parliament as the second party in all of these seven general elections, has an average of 23.06 percent of the votes in seven elections. The difference in points between the first party and the second party is, on average, 19.7 percent in seven general elections. This average means that the AKP received nearly twice the votes of the second party. According to the writers, the AKP easily suits Sartori's definition of the predominant party when all of these factors are taken into account³²⁷. In other words, the predominant party system has been the party system in Turkey since 2002. However, this predominant party system emerged as a two-party system with a predominant party in the period between 2002 and 2007, due to the 10 percent election threshold in the country. They clarified that if the election threshold was set at a fair level, a different party system would emerge in practice. In the period from 2007 to the present, the party system is literally "a limited pluralist multi-party system with a predominant party"³²⁸.

According to Sartori, a predominant party is one "*that outdistances all the others; this party is dominant in that it is significantly stronger than the others*"³²⁹. Pempel delineates more specific criteria, positing that within a predominant party system, a party must demonstrate dominance in number, hold a dominant bargaining position, maintain chronological precedence, and wield governmental dominance, meaning it possesses the capability to enact a series of interlinked and mutually reinforcing public policies³³⁰.

³²⁵ Sayari, "Towards a New Turkish Party System?" 205.

³²⁶ Hamdemir and Çelik, "Türkiye'de Parti Sistemleri," 726.

³²⁷ As a reminder, Sartori defines the predominant-party structures as those in which the same party wins from within an absolute majority over time, see Sartori, *Parties and Party Systems*, 74-75.

³²⁸ Hamdemir and Çelik, "Türkiye'de Parti Sistemleri," 726-727.

³²⁹ Sartori, *Parties and Party Systems*, 171.

³³⁰ T.J. Pempel, "Introduction. Uncommon Democracies: The One-Party Dominant Regimes," in *Uncommon Democracies: The One-Party Dominant Regimes*, ed. T.J. Pempel (Ithaca and London: Cornell University Press, 1990): 3-4.

Pempel also mentions that in order to isolate the opposition, a dominant party must use state instruments to strengthen its electoral position³³¹. In practice, the dominant party, namely the AKP, utilizes this approach to strengthen hyper-presidentialism by effectively isolating the opposition.

Sartori's principles are applicable within the context of parliamentary systems, wherein the government derives its authority from a parliamentary majority. Regarding presidential systems, Sartori posits that "*the counting criteria must be reformulated and relaxed, for the parties that count are simply the ones that make a difference in helping (or obstructing) the president's election and that determine his having (or not having) a majority support in the legislative assemblies*"³³². In presidential systems, the dominant party should control both parliament and the presidency³³³. Accordingly, an analysis of the elections after the transition to the presidential system does not change the fact that the AKP is the predominant party.

Another categorization scheme applicable to party systems involves party discipline, which significantly impacts a country's political structure. Political parties can be categorized as disciplined and undisciplined (*souple*) according to whether the leaders have authority over the elected or unelected members of the party³³⁴. This authority is enforced through a system of incentives and penalties³³⁵. Incentives may encompass staff support and access to resources, while penalties range from the denial of favors to deselection or expulsion³³⁶. The nomination of parliamentary candidates emerges as a pivotal incentive. In political parties, strong discipline allows the party leader to control the party's representatives in parliament³³⁷. Consequently, strong party discipline leads to the oligarchic domination of one man or a few individuals, a party dictatorship³³⁸.

After the organizational preference survey is conducted for parliamentary candidates for nomination within the AKP, sub-committees composed of members of the Central Executive Committee and the Central Decision and Management Committee

³³¹ Pempel, "Introduction," 16.

³³² Sartori, *Comparative Constitutional Engineering*, 34.

³³³ Matthijs Bogaards, "Counting Parties and Identifying Dominant Party Systems in Africa," *European Journal of Political Research* 43, no. 2 (2004): 175. <https://doi.org/10.1111/j.1475-6765.2004.00150.x>.

³³⁴ Teziç, *Anayasa Hukuku*, 406-407.

³³⁵ Zdzisław Kędzia and Agata Hauser, "The Impact of Political Party Control over the Exercise of the Parliamentary Mandate," *Inter-Parliamentary Union*, 10, <http://archive.ipu.org/conf-e/129/control-study.pdf>.

³³⁶ Knut Heidar and Ruud Koole, "Parliamentary Party Groups Compared," in *Parliamentary Party Groups in European Democracies: Political Parties behind Closed Doors*, ed. Knut Heidar and Ruud Koole, (London: Routledge, 2000) 256.

³³⁷ Mehmet Kabasakal, "Deparliamentarization in Turkey: A Major Decline in Scrutiny Function," *International Journal of Political Science & Urban Studies* 7, no. 1 (March 2019): 174. DOI: 10.14782/ipsus.539212.

³³⁸ Ali Öztekin, *Siyaset Bilimine Giriş* (Ankara: Siyasal Kitabevi, 2018), 103.

evaluate the applications for parliamentary candidacy. Following the assessments of these sub-committees, the final decision is rendered in the upper commission, presided over by the President of the Republic and the AKP Chairperson,³³⁹. A similar process is observed within the CHP, which established an eight-member commission for the 2023 elections. Reports are submitted for approval to the then-CHP Chairperson and the Central Executive Board before finalizing the parliamentary candidate lists in the Party Assembly³⁴⁰.

The convergence of a president elected by the people and also serving as the leader of a political party holds significant implications. In such cases, the president-leader possesses persuasive influence over deputies, facilitating the passage of laws aligned with their agenda, particularly if their party holds a majority in parliament. This indirect possession of legislative and decree power underscores that a disciplined political party system, coupled with the electoral framework, may tilt the balance against the legislative branch in favor of the president.

At the time of the birth of the US presidential system, political parties were absent, and the founding fathers were even against the idea of political organization, as it was perceived to have divisive implications for society³⁴¹. Nevertheless, following the establishment of the Constitution, the emergence of political parties developed as the result of the federalist-anti-federalist divide, ultimately giving birth to the political parties of today. However, the political parties in the US are characterized as undisciplined, contrary to their European counterparts. Even if the president and the legislative majority come from the same political party, the control that presidents can exert over the legislature through their party affiliations remains limited³⁴².

Unlike in the US, Latin American presidential systems have disciplined parties. For example, Argentina, like Turkey, is reported to have a very high level of party discipline, with representatives being elected through closed party lists where the party leaders choose the order in which candidates will be placed on that list³⁴³. Similarly,

³³⁹ Ali Kemal Akan, "AK Parti'de Milletvekili Adaylarını Belirleme Süreci Başlıyor," *AA*, March 22, 2023, <https://www.aa.com.tr/tr/politika/ak-partide-milletvekili-adaylarini-belirleme-sureci-basliyor/2852509>; "AK Parti'de Aday Belirleme Süreci Nasıl Olacak," *Hürriyet*, May 3, 2018, <https://www.hurriyet.com.tr/gundem/ak-partide-aday-belirleme-sureci-nasil-olacak-40824396>.

³⁴⁰ Cansu Timur, "CHP'de Milletvekili Aday Adayı Olmak İsteyenler İçin Başvurular Başladı," *Medyascope*, March 13, 2023, <https://medyascope.tv/2023/03/13/chpde-milletvekili-aday-adayi-olmak-isteyenler-icin-basvurular-basladi/>.

³⁴¹ Richard H. Fallon Jr., *The Dynamic Constitution: An Introduction to American Constitutional Law and Practice*, 2nd ed. (Cambridge: Cambridge University Press, 2013), 6.

³⁴² Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 65.

³⁴³ Mark P. Jones, "Explaining the High Level of Party Discipline in the Argentine Congress," in *Legislative Politics in Latin America*, ed. Scott Morgenstern and Benito Nacif (Cambridge: Cambridge University Press, 2002).

Mexico³⁴⁴ and Venezuela³⁴⁵ have strong party discipline, in which party leaders nominate candidates for legislative office. Brazil's party discipline has been characterized by scholars as a puzzle³⁴⁶. Although scholars believe that Brazil's candidate-centered electoral system weakens the ability of leaders to enforce discipline³⁴⁷, there is research suggesting that clientelism increases party discipline³⁴⁸.

3.1.3 Abuse of State Resources and Media During the Election Periods

In the first chapter, as observed in the OSCE referendum report, the ruling party, benefiting from being in government for over 20 years and being the predominant party, has been utilizing state resources to skew the playing field. In addition to the above-mentioned political party and electoral system, one mechanism that tilts the playing field and reduces the opposition's chances of winning elections is the abuse of state resources by the incumbents³⁴⁹.

Levitsky and Way assert that in countries characterized by competitive authoritarianism, the utilization of state resources by the incumbent president and party is conducted in a manner that preserves the freedom of the opposition; however, it is strategically manipulated to disrupt the playing field in favor of the government, hindering the opposition from securing victory³⁵⁰. Similarly, in a hegemonic party system, Larry Diamond characterized it as a relatively institutionalized ruling party that monopolizes the political arena through coercion, patronage, media control, and various means, denying formally legal opposition parties any genuine opportunity to compete for power³⁵¹. Carothers also described this situation as a "dominant-power" country³⁵². The identification of the utilization of state resources by governments is most effectively

³⁴⁴ Benito Nacif, "Understanding Party Discipline in the Mexican Chamber of Deputies: The Centralized Party Model," in *Legislative Politics in Latin America*, ed. Scott Morgenstern and Benito Nacif (Cambridge: Cambridge University Press, 2002).

³⁴⁵ Jana Morgan, "Deterioration and Polarization of Party Politics in Venezuela," in *Party Systems in Latin America: Institutionalization, Decay and Collapse*, ed. Scott Mainwaring (Cambridge: Cambridge University Press, 2018).

³⁴⁶ Octavia Amorim Neto, "The Puzzle of Party Discipline in Brazil," *Latin American Politics and Society*, 44, no. 1 (2002). <https://doi.org/10.2307/3177113>; Ivan Chavez Juca, *Explaining the Puzzle of Weak Parties with Strong Legislative Leaders in Brazil: Towards a Theory of Clientelistic Party Discipline*, PhD Diss., (University of Minnesota, 2022).

³⁴⁷ Scott P. Mainwaring, *Rethinking Party Systems in the Third Wave of Democratization: The Case of Brazil* (Stanford: Stanford University Press, 1999).

³⁴⁸ Juca, *Explaining the Puzzle of Weak Parties with Strong Legislative Leaders in Brazil*.

³⁴⁹ Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13, no. 1 (2002): 12; Steven Levitsky and Lucan A. Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (Cambridge: Cambridge University Press, 2010).

³⁵⁰ Levitsky and Way, *Competitive Authoritarianism*.

³⁵¹ Larry Diamond, "Elections without Democracy: Thinking about Hybrid Regimes," *Journal of Democracy* 13, no. 2 (April 2002).

³⁵² Carothers, "The End of the Transition Paradigm," 12.

understood through election observation reports, which have also underpinned the findings of this study. In alignment with the referendum campaign above, this study drew upon the election observation reports of the OSCE for Turkey.

Accordingly, in the presidential and parliamentary elections held in May 2023, it was observed that the incumbent president conducted his campaign while simultaneously fulfilling presidential duties. Various large-scale infrastructure project inauguration ceremonies were also strategically utilized for campaign purposes. During the groundbreaking ceremony for public housing for the earthquake victims in Malatya, the President criticized the opposition, alleging incompetence and terrorist connections³⁵³. During this period, significant social assistance programs were introduced, including a public pledge made on April 20 to provide free natural gas to households for one year³⁵⁴. Some municipalities made public transportation free on the days of President's rallies³⁵⁵.

According to the OSCE report, during the election period of 2023, at least 50 individuals were detained on charges of supporting terrorist organizations due to their news coverage or social media posts³⁵⁶. Twitter and Facebook restricted access to certain content and user accounts in response to blocking requests from Turkish authorities³⁵⁷. Most broadcasters monitored by the OSCE observers displayed overt support for the incumbent President, often merging his official duties with campaign activities³⁵⁸. The public television channels TRT-1 and TRT Haber was observed to display a clear bias towards the People's Alliance and President Erdoğan, providing predominantly positive coverage totaling 44 percent and 45 percent, respectively. In contrast, the Nation Alliance and its candidate were portrayed mostly negatively, receiving 28 percent and 25 percent. This trend persisted in the second round, where the President received 64 percent and 73 percent positive coverage, while Kılıçdaroğlu received mainly negative coverage at 36

³⁵³ OSCE, *Republic of Türkiye, General Elections 14 May*, 17; T.C. Cumhurbaşkanlığı, "Cumhurbaşkanı Erdoğan, Malatya'da Deprem Konutları Temel Atma ve Anahtar Teslim Töreni'nde Konuşuyor," *Youtube*, April 13, 2023, <https://www.youtube.com/watch?v=Sg6iUafO3bg>.

³⁵⁴ "Erdoğan Offers Free Gas Pre-Election After First Black Sea Field Shipment," *Reuters*, April 24, 2023, <https://www.reuters.com/world/middle-east/erdogan-offers-free-gas-pre-election-after-first-black-sea-field-shipment-2023-04-20/>.

³⁵⁵ "Erdoğan Geldi, Belediye Otobüsleri Ücretsiz Yapıldı," *Sözcü*, April 19, 2023, <https://www.sozcu.com.tr/erdogan-geldi-belediye-otobusleri-ucretsiz-yapildi-wp7659445>; "Erdoğan'ın Mitingi İçin Büyükşehir Belediyesi Toplu Taşımayı Ücretsiz Yaptı," *Ajans Urfa*, April 16, 2023, <https://www.ajansurfa.com/haber/14769471/erdoganin-mitingi-icin-buyuksehir-belediyesi-toplu-tasimayi-ucretsiz-yapti>; "Samsun Büyükşehir Erdoğan'ın Mitingi İçin Toplu Taşıma Araçlarını Ücretsiz Yaptı," *Samsun Kent Haber*, May 3, 2023, <https://www.samsunkenthaber.com.tr/samsun-buyuksehir-erdogan-in-mitingi-icin-toplu-tasima-araclarini-ucretsiz-yapti/15102/>.

³⁵⁶ OSCE, *Republic of Türkiye, General Elections 14 May*, 20.

³⁵⁷ Megan Cerullo, "Twitter under Fire for Restricting Content Before Turkish Presidential Election," *CBS News*, May 16, 2023, <https://www.cbsnews.com/news/twitter-censoring-content-recep-tayyip-erdogan-turkish-presidential-election/>.

³⁵⁸ OSCE, *Republic of Türkiye, General Elections 14 May*, 22.

percent and 27 percent. This raises concerns about potential violations of constitutional impartiality guarantees in media reporting³⁵⁹. It is crucial to remember that the management of TRT is overseen by a board of directors comprising nine members and a general director, all appointed by the president³⁶⁰.

A review of US presidential election reports observed by OSCE shows that only in the 2020 presidential elections did the then-President Donald Trump use his office to gain political advantage³⁶¹. Some OSCE interlocutors have raised concerns about the use of administrative resources for campaigning. They point to the inclusion of the president's name and campaign slogans in letters accompanying COVID-19 economic relief checks sent to voters³⁶². This marked the first instance of a president's name appearing on an Internal Revenue Service (IRS) disbursement³⁶³.

According to the EU Election Observation Mission's report on the 2009 Bolivian elections, the growing number of judicial investigations launched against the leaders of the PPB-CN (*Plan Progreso para Bolivia-Convergencia Nacional*) negatively affected their capacity to carry out electoral activities. However, it was observed that pro-government public service advertisements proliferated significantly during the election period³⁶⁴.

The dominant media presence of Rafael Correa, President of Ecuador from 2006 to 2017, was noted in the 2009 election report as not serving to promote a level playing field³⁶⁵. In the 2019 presidential elections in El Salvador, state media outlets TVES and RNES openly supported Hugo Martínez and the ruling party. Private media also gave coverage to ARENA and FMLN, the two parties in El Salvador, which until 2019 had a

³⁵⁹ OSCE, *Republic of Türkiye, General Elections 14 May*, 22-23.

³⁶⁰ Regulation on the Working Principles of the Board of Directors of the Turkish Radio and Television Corporation no. 27217, May 3, 2009, art. 5 (amended). "The Board of Directors consists of 9 members, including the General Manager. The Chairperson and members of the Board of Directors are appointed in accordance with the Presidential Decree No. 3 on Appointment Procedures for Upper Level Public Administrators and Public Institutions and Organizations."

³⁶¹ OSCE, *United States of America: General Elections 3 November 2020: ODIHR Limited Election Observation Mission Final Report* (Warsaw: February 9, 2021): 20; OSCE, *United States of America: General Elections 2 November 2004: ODIHR Election Observation Mission Final Report* (Warsaw: March 31, 2005); OSCE, *United States of America: General Elections 6 November 2012: ODIHR Limited Election Observation Mission Final Report* (Warsaw: February 13, 2013).

³⁶² OSCE, *United States of America: General Elections 3 November 2020*, 20.

³⁶³ Will Steakin, "Americans Receiving Letters Signed By Trump Explaining Stimulus Checks, Touting Coronavirus Response," *ABC News*, April 27, 2020, <https://abcnews.go.com/Politics/americans-receiving-letters-signed-trump-explaining-stimulus-checks/story?id=70370041>; Lisa Rein, "Donald J. Trump's Name Will Be On Stimulus Checks in Unprecedented Move," *Washington Post*, April 14, 2020, https://www.washingtonpost.com/politics/coming-to-your-1200-relief-check-donald-j-trumps-name/2020/04/14/071016c2-7e82-11ea-8013-1b6da0e4a2b7_story.html.

³⁶⁴ European Union Election Observation Mission Plurinational State of Bolivia, *General Elections and Autonomy Referendum Preliminary Statement* (La Paz, December 8, 2009).

³⁶⁵ European Union Election Observation Mission Ecuador, *Presidential and Parliamentary Elections Final Report* (June 2009), 4.

two-party system, and denigrated GANA. And although GANA's candidate, Nayib Bukele, had the most negative reporting by the media during this period, he managed to win the 2019 elections³⁶⁶. In the 2023 Guatemalan elections, irregular UNE and Vamos campaign practices and vote-buying were reported by EU observers, including the distribution of household items, food, and money related to both municipal and presidential campaign events³⁶⁷. In the 2021 Honduran elections, EU observers reported abuse of administrative resources through the increased distribution of aid vouchers in eight departments in connection with the ruling *Partido Nacional de Honduras* (PNH) campaign. Instances were also reported where government officials pressured public servants to attend rallies, register as PNH polling station members, and ensure votes for the PNH³⁶⁸.

According to the electoral reform in 2021 in Nicaragua, public party meetings during election campaigns now require authorization from the Supreme Electoral Council. The authority to intervene in such unauthorized gatherings rests with the Nicaraguan National Police, which was expected to crack down on opposition party gatherings since it is headed by the President³⁶⁹.

The case studies presented highlight the variety of strategies incumbents use to gain an electoral advantage. Election integrity is regularly jeopardized by the abuse of state resources, media bias, and the exploitation of public events for political ends.

3.2 Information and Oversight Mechanisms

In the presidential system, the strict separation of powers between the legislative and executive branches has historically been a defining feature. However, mechanisms facilitating reciprocal interaction between these branches have evolved, primarily to ensure the system's functionality without compromising its integrity³⁷⁰. This mechanism, commonly referred to as checks and balances, serves to deter the concentration of power within a single entity³⁷¹.

³⁶⁶ European Union Election Observation Mission El Salvador, *Presidential Election Final Report*, (February 2019), 2.

³⁶⁷ European Union Election Observation Mission Guatemala, *Presidential Run-Off Preliminary Statement* (Guatemala City: August 2023), 2.

³⁶⁸ European Union Election Observation Mission Honduras, *General Elections Final Report* (November 2021), 6.

³⁶⁹ Kriener, Argüello and Ripplinger, "Nicaragua's Electoral Counter-Reform".

³⁷⁰ Kemal Gözler, *Anayasa Hukukunun Genel Teorisi: Cilt 1*, 2nd ed. (Bursa: Ekin, 2020), 639-655.

³⁷¹ Serdar Gülener, "Rapor: Başkanlık Sistemlerinde Denge ve Denetleme: ABD, Brezilya, Arjantin, Meksika, Şili, Güney Kore," *SETA* (2016): 13.

Constitutional limitations, based on the principle of separation of powers, aim to prevent the abuse of executive power, establish mechanisms for checks and balances against the potential for corruption, and protect individual and social rights. Oversight of these boundaries is institutionally entrusted to the legislature and the judiciary³⁷².

While oversight tools traditionally fall within the purview of parliamentary responsibility, the classical parliamentary schema deviates in the face of current social realities. The rights are indeed granted to parliament as a sole institution; however, in general, these rights are more important in practice for and used by the parliamentary opposition³⁷³. Depending on whether the initiators are members of the opposition or not, some tools may have more possibilities for being scheduled and debated. There are many strategies used by parliaments to strengthen the opposition's right to have its oversight tools and suggestions placed on the agenda³⁷⁴. However, the 2017 constitutional amendment represented a significant departure from the checks and balances, deliberately undermining the opposition's oversight mechanisms and concentrating power under a hyper-presidential system.

By introducing the presidential system, it was made to believe that a more rigid separation of powers was being introduced. However, the apparent rigidity introduced by the amendment is deceptive, as important issues about the electoral system and political parties were mainly ignored³⁷⁵. It is imperative to revisit matters such as party discipline and concurrent elections, as stipulated in Article 77, which mandates simultaneous parliamentary and presidential elections to ensure executive dominance over the legislature. In Turkey, where intra-party discipline is notably firm, a scenario where the president also leads the majority party facilitates presidential control over the parliament, thereby diminishing its leaning towards executive oversight. Consequently, the strength of the parliamentary opposition becomes paramount.

In the 2018 Turkish elections, the AKP secured 295 parliamentary seats³⁷⁶ with 42.56 percent of the votes. Its ally, the MHP, received 11.10 percent of the vote and gained 49 seats. Together, the People's Alliance, comprising the AKP and MHP, controlled a total vote share of 53.66 percent. The joint presidential candidate of the

³⁷² Eda Bektaş, "Cumhurbaşkanlığı Hükümet Sisteminde Yasama-Yürütme İlişkisi ve Bu Sistemin Türkiye Demokrasisine Etkileri," *Yasama Dergisi* 39(2019): 202-203.

³⁷³ Yılmaz Turgut, *Siyasal Muhalefet*, 57.

³⁷⁴ Elena Griglio, *Parliamentary Oversight of the Executives: Tools and Procedures in Europe* (Oxford: Hart 2020), 85.

³⁷⁵ Doğan and Geyik, "Cumhurbaşkanlığı Hükümet Sisteminde Kuvvetler Ayrılığı İlkesi," 21.

³⁷⁶ "27. Dönem Milletvekili Genel Seçimi Siyasi Partilerin Seçim Çevrelerine Göre Kazandıkları Milletvekili Sayıları," *YSK*, <https://www.ysk.gov.tr/doc/dosyalar/docs/24Haziran2018/2018CBMV-MVSecimCevresi.pdf>.

alliance, received 52.59 percent of the votes and was elected president in the first round³⁷⁷. Although the AKP alone did not have a parliamentary majority, the People's Alliance collectively wielded a majority, enabling the President to exert control over the legislature. The same scenario was realized again with the 2023 elections. In this election, the AKP again allied with the MHP, which also included other small parties. The People's Alliance has secured a parliamentary majority by winning 323 seats (53.83 percent)³⁷⁸.

In the current situation in Turkey, effective parliamentary oversight of the president is a formidable task that falls primarily to the opposition. In this case, it arouses curiosity about how the opposition parties, which altogether occupy 271 seats in the parliament, can oversee the president. This inquiry requires an examination of Turkey's legal framework, including constitutional practices, to assess how the opposition uses oversight mechanisms compared to other presidential systems.

After the 2017 Constitutional Amendment, parliamentary oversight procedures have changed to a great extent. These procedures are listed in the constitution as parliamentary inquiry, general debate, parliamentary investigation, and written question³⁷⁹. In contrast to the parliamentary system, Article 99 of the Constitution, which regulates censure, was repealed, as the new system no longer features a prime minister and ministers collectively and individually responsible to the parliament³⁸⁰. Likewise, the verbal question was repealed with the amendment. As a result, the effectiveness of the remaining oversight mechanisms requires further scrutiny.

3.2.1 General Debate and Parliamentary Inquiry

The belief that parliaments require information to fulfill their constitutional duties is widely acknowledged in constitutional theory³⁸¹. However, access to information about government actions or intentions is often limited to the opposition, which primarily relies on information provided by the government³⁸². Despite this, parliaments require effective

³⁷⁷ "Cumhurbaşkanı Erdoğan, TBMM Genel Kurulu'nda Yemin Ederek Göreve Başladı," *Türkiye Cumhuriyeti Cumhurbaşkanlığı*, July 9, 2018, <https://www.tccb.gov.tr/haberler/410/94757/cumhurbaskani-erdogan-tbmm-genel-kurulu-nda-yemin-ederek-goreve-basladi>.

³⁷⁸ "28. Dönem Milletvekilleri Sandalye Dağılımı," *Türkiye Büyük Millet Meclisi*, <https://www.tbmm.gov.tr/sandalyedagilimi>.

³⁷⁹ Turkish Constitution, art. 98/1. "The Grand National Assembly of Turkey shall exercise its powers of acquiring information and supervision by means of parliamentary inquiry, general debate, censure, parliamentary investigation, and written question."

³⁸⁰ Okşar, *Yürütme Erkinin Üstünlüğü*, 155-156; Vahap Coşkun, "16 Nisan 2017 Tarihinde Kabul Edilen Anayasa Değişikliklerinin Değerlendirilmesi," *Dicle Üniversitesi Hukuk Fakültesi Dergisi* 22, no. 36 (2017): 13.

³⁸¹ Griglio, *Parliamentary Oversight of the Executives*, 76.

³⁸² Manuel Sánchez de Dios and Matti Wiberg, "Questioning in European Parliaments," *The Journal of Legislative Studies* 17, no. 3 (2011): 358.

discussion forums as well as a free flow of information to hold the executive accountable³⁸³.

Parliaments may exercise their power to obtain information through procedures such as parliamentary inquiry and general debate, as outlined in Article 98/2-3³⁸⁴ of the Turkish Constitution. A parliamentary inquiry involves an examination conducted to obtain information on a specific subject, while a general debate entails considering a specific subject relating to the community and the activities of the state in the Plenary of the Grand National Assembly of Turkey.

The effectiveness of parliamentary inquiry as an oversight tool is limited by the exemption of state secrets and trade secrets from its scope, according to Parliament's Rules of Procedure³⁸⁵. This limitation may allow the executive to withhold information by qualifying it as a state secret, hindering the intended function of parliamentary inquiry.

Upon completing its activities, the inquiry commission presents a report to the parliament, leading to a general debate in the plenary³⁸⁶. However, these procedures lack direct and effective political consequences, as no decisions or votes are taken regarding the executive's responsibility³⁸⁷. Nevertheless, some scholars argue that these tools may indirectly hold the government accountable by fostering discussion and potentially leading to amendments or the creation of laws³⁸⁸. For instance, Gözler suggests that the parliamentary inquiry findings and general debates can expose the executive, fostering discussion. In addition, he states that the information obtained can enlighten the parliament, potentially leading to amendments or the creation of laws³⁸⁹.

The acceptance of parliamentary inquiry proposals by opposition parties must be discussed before initiating these procedures. According to the Rules of Procedure, a motion to open a general debate or parliamentary inquiry requires submission by at least

³⁸³ Richard Mulgan, "'Accountability': An Ever-Expanding Concept?" *Public Administration* 78, no. 3 (2000): 567. <https://doi.org/10.1111/1467-9299.00218>.

³⁸⁴ Turkish Constitution art. 98/2,3. "A parliamentary inquiry is an examination conducted to acquire information on a specific subject.

A general debate is the consideration of a specific subject relating to the community and the activities of the State at the Plenary of the Grand National Assembly of Turkey."

³⁸⁵ Rules of Procedure of the Grand National Assembly of Turkey, art. 105/5. "State secrets and commercial secrets remain outside the scope of the Parliament's investigation."

³⁸⁶ Rules of Procedure of the Grand National Assembly of Turkey, art. 104/3. "When opening a parliamentary investigation, the provisions regarding opening a general debate apply."

³⁸⁷ Okşar, *Yürütme Erkinin Üstünlüğü*, 156; Abdulkadir Yıldız, "Amerika Birleşik Devletleri'nde Başkan Yardımcısı ile Türkiye'de Cumhurbaşkanı Yardımcısının Karşılaştırılması," *Erciyes Üniversitesi Hukuk Fakültesi Dergisi* 13, no. 1 (2018): 528.

³⁸⁸ Hayri Keser, "Başkanlık Sisteminde Yasama ve Yürütme Organları Arasındaki Karşılıklı Etkileşim Araçları Açısından Türkiye-ABD Hükümet Sistemlerinin Karşılaştırılması," *Akdeniz Üniversitesi Hukuk Fakültesi Dergisi* 11, no. 2 (2021): 176. <https://doi.org/10.54704/akdhfd.1033555>.

³⁸⁹ Gözler, *Türk Anayasa Hukuku Dersleri*, 263.

twenty deputies or a single political party group³⁹⁰. However, achieving an absolute majority for acceptance of a motion is generally challenging.

Recent reports from news articles suggest that opposition parties in Turkey face challenges in attaining the necessary quorum for acceptance of inquiry proposals. For instance, in the first three months of 2022, 83 separate inquiry proposals submitted by the opposition were rejected by the votes of the People's Alliance³⁹¹. During the 27th period, out of 5088 inquiry proposals submitted to the Presidency of the Parliament, only a fraction were accepted, with the CHP submitting the most proposals³⁹². The rejection and acceptance of parliamentary inquiry proposals in Turkey are the most obvious examples of block voting by highly disciplined parties. Notably, some inquiry motions, despite aligning with the policies of the People's Alliance, face rejection as a unified block³⁹³. This phenomenon is not merely a consequence of hyper-presidentialism; rather, it is a manifestation of the extraordinary party discipline observed in Turkish politics.

Turning to the United States, while not explicitly defined in the Constitution, Congress has the power to establish "congressional commissions". These commissions are usually established to formulate public policy but may also have investigative functions. Commissions are established by law and require an absolute majority of both chambers. In general, these commissions have a non-partisan or bipartisan character³⁹⁴.

³⁹⁰ Rules of Procedure of the Grand National Assembly of Turkey, art. 102/1. "Opening a general discussion may be requested by political party groups or at least twenty members of parliament with a motion from the Presidency. This request is immediately included in the list of incoming papers and announced to the members of parliament."

³⁹¹ "Meclis'in Ret Cephesi," *Sözcü*, March 27, 2022, <https://www.sozcu.com.tr/meclisin-ret-cephesi-wp7036438>.

³⁹² "Meclis'in Soru Önergesi Karnesi: 3 Sorudan Biri Yanıtsız Kaldı," *Gazete Duvar*, November 18, 2021, <https://www.gazeteduvar.com.tr/meclisin-soru-onergesi-karnesi-3-sorudan-biri-yanitsiz-kaldi-haber-1542306>.

³⁹³ Berza Şimşek, "AKP'nin Meclis'te Reddettiği Araştırma Önergeleri," *BBC*, August 2, 2018, <https://www.bbc.com/turkce/haberler-turkiye-45042998>.

³⁹⁴ Congressional Research Service, *Congressional Commissions: Overview, Structure, and Legislative Considerations*, 2017.

In contrast, in Chile³⁹⁵ and Mexico³⁹⁶, proposing a parliamentary inquiry is more challenging than in Turkey. In Brazil, according to Article 58/3 of the Constitution³⁹⁷, both the Senate and the Chamber of Deputies can initiate a parliamentary inquiry with only one-third of the members needed. In 2021, despite reaching the requisite number of senators to convene a commission and initiate a public inquiry into President Bolsonaro's alleged negligence regarding the pandemic response, the Speaker of the Assembly, an ally of President Bolsonaro, hesitated to bring the petition before the Plenary of the Assembly. He resisted establishing the commission, contending that, as the Speaker of the Legislative Assembly, he possessed discretionary authority to determine the establishment of such a commission. However, the Supreme Federal Court intervened, compelling the urgent initiation of procedures to safeguard the minority's right to investigate President Bolsonaro's accountability³⁹⁸. As seen in Brazil, the use of parliamentary inquiry has been possible due to the independence of the judiciary and the fragmentation of the parliament, despite Bolsonaro's attempt to turn Brazil into hyper-presidentialism.

3.2.2 Written Questions

The practice of written questions serves as a cornerstone of parliamentary oversight, aimed primarily at acquiring information and addressing potential information asymmetry³⁹⁹. Despite their prevalence, written questions are often deemed the least

³⁹⁵ Constitution of Chile, art. 52/1-c. "The exclusive powers of the House of Representatives are:

1. To supervise the acts of the Government. To exercise this power the House may:

c. Create special investigating commissions at the request of at least two-fifths of the representatives in exercise, with the object of gathering information relative to certain acts of the Government.

Investigating commissions, at the petition of one-third of their members, may issue summons and request records. The Ministers of State, other officials of the Administration and the personnel of State enterprises or of those in which it has majority participation, that are summoned by this commissions, will be obliged to appear and to provide the records and information that is requested to them.

However, the Ministers of State cannot be summoned more than three times by the same investigating commission, without prior agreements of the absolute majority of its members.

The constitutional organic law of the National Congress shall regulate the functioning and powers of investigating commissions and the manner of protecting the rights of the persons summoned or mentioned in them."

³⁹⁶ Constitution of Mexico, art. 93/3. "The House of Representatives, by request of a quarter of its members, and the Senate, by request of a half of its members, have the power to create committees to investigate the functioning of decentralized and semipublic entities. The results of the investigations shall be submitted to the President of the Republic."

³⁹⁷ Constitution of Brazil art. 58/3. "Parliamentary investigative committees, which shall have the same investigative powers as judicial authorities, in addition to other powers set forth in the by-laws of their respective Chambers, shall be created by the Chamber of Deputies and the Federal Senate, either jointly or separately, upon the request of one-third of its members, to investigate certain facts for a determined period of time. If appropriate, their conclusions shall be forwarded to the Public Ministry to determine whether to pursue civil or criminal liability of the offenders."

³⁹⁸ Thomas Bustamante and Evanilda Nascimento e Godoi Bustamante, "Negationism's 'Day in Court'," *Verfassungsblog*, April 11, 2021, <https://verfassungsblog.de/negationisms-day-in-court/>.

³⁹⁹ de Dios and Wiberg, "Questioning in European Parliaments," 364.

effective means of oversight. However, they also serve as an ex-post tool to demand information from the government regarding prior policy decisions. This questioning can be characterized as a control game involving government and opposition parties⁴⁰⁰ and is seen as a classic opposition strategy, serving as one of the safeguards given to minorities⁴⁰¹.

According to the Turkish Constitution, “*a written question is a request for information addressed to the Vice Presidents of the Republic of Ministers by deputies to be answered in writing within fifteen days at the latest*”⁴⁰². Yet, this mechanism is not an effective way to control the executive since it is not followed by a vote of confidence, and it excludes the president, who is the sole power of the executive. In the previous system, it was feasible to ask questions to the prime minister, a process that is now unattainable for the president under the present system. Considering the duties and powers of the prime minister were transferred to the president, the reason for the lack of oversight on the part of the president remains perplexing⁴⁰³.

Remarkably, the failure to respond to written questions within the stipulated timeframe in Turkey does not result in sanctions, as evidenced by the substantial number of unanswered questions during the 27th legislative period⁴⁰⁴. This highlights a significant gap in the efficacy of oversight mechanisms.

In contrast to the US model, Latin American presidential systems have incorporated oversight mechanisms akin to parliamentary systems, drawing inspiration from European models. However, similar to Turkey, directing questions to the president is not feasible in these systems, limiting inquiries to ministers or vice presidents. Yet, the consequences of non-compliance vary significantly among Latin American countries. For instance, in Brazil, failure to respond to written questions constitutes an impeachable offense⁴⁰⁵.

Furthermore, Latin American presidential systems often allow for the summoning of ministers or vice presidents to the legislature to answer oral questions, with non-compliance potentially resulting in their removal from office or censure in certain

⁴⁰⁰ de Dios and Wiberg, “Questioning in European Parliaments,” 355.

⁴⁰¹ Griglio, *Parliamentary Oversight of the Executives*, 117-118.

⁴⁰² Turkish Constitution, art. 98/5.

⁴⁰³ For the same opinion see, Gözler, *Türk Anayasa Hukuku Dersleri*, 261.

⁴⁰⁴ Gazete Duvar, “Meclis’in Soru Önergesi Karnesi”.

⁴⁰⁵ Constitution of Brazil, art. 50 §2°. “The Executive Committees of the Chamber of Deputies and the Federal Senate may send written requests for information to Ministers of the Federal Government, or any person referred to in the heading of this article. Refusal or noncompliance with such request within a period of thirty days, as well as the rendering of false information, constitutes an impeachable offense.”

countries⁴⁰⁶. Moreover, in Argentina⁴⁰⁷, Bolivia⁴⁰⁸, Colombia⁴⁰⁹, and Nicaragua⁴¹⁰ ministers can face censure as a consequence of the outcomes of these oral questions.

What is clear from this comparison is that while Turkey struggles with the accountability of ministers solely to the president, Latin American systems demonstrate a more robust framework for holding executive officials accountable to the legislature. This situation puts Turkey in a weaker position compared to Latin American presidential countries in terms of accountability.

3.2.3 Parliamentary Investigation

In the realm of constitutional jurisprudence, impeachment denotes a pivotal process whereby a legislative body sanctions a political trial of the president, often orchestrated by a distinct political entity such as a secondary chamber or the judiciary⁴¹¹.

The Turkish Constitution codifies the “impeachment” procedure under the name of “parliamentary investigation” in Articles 105 and 106. It defines a parliamentary

⁴⁰⁶ Constitution of Dominican Republic art. 94. “The unwillingness of the summoned people to appear or to render the required declarations, shall be sanctioned by the criminal courts of the Republic, with the penalty provided for by the legal provisions in force for cases of contempt of public authority, at the request of the appropriate chamber.” art. 95. “To question ministers and vice ministers, the Governor of the Central Bank and the directors or administrators of autonomous and decentralized bodies of the State, as well as those from entities that administer public funds about matters of their competence, when agreed to by the majority of the present members, at the request of at least three legislators, as well as to gather information from other public functionaries that are competent in the subject and dependents of those previously specified.”

⁴⁰⁷ Constitution of Argentina art. 101. “The Chief of the Cabinet of Ministers must attend Congress at least once a month, attending each Chamber alternately, to inform them of the government's progress, without prejudice to what is provided for in Article 71. He may be cross-examined for the purposes of considering a censure motion, by an absolute majority vote of the totality of the members of either of the Chambers, and he may be removed by an absolute majority vote of the members of each of the Chambers.”

⁴⁰⁸ Constitution of Bolivia art. 158/18. “The attributes of the Pluri-National Legislative Assembly, in addition to those determined by this Constitution and the law are the following:

18. To question, at the initiative of any of the members of the assembly, the Ministers of State, individually or collectively, and to censure by the vote of two-thirds of the members of the Assembly. The questioning shall be requested by either of the Chambers. The censure shall imply the replacement of the Minister.”

⁴⁰⁹ Constitution of Colombia art. 135/8. “Each House shall have the following powers:

8. To summon and require the ministers, permanent secretaries and heads of administrative departments to attend the sessions. The summons must be made not less than five days prior to a session and be formulated in the form of a written questionnaire. In case the ministers, permanent secretaries or heads of administrative departments do not attend, without an excuse accepted by the respective House, the latter may table a motion of censure. The ministers, permanent secretaries and heads of administrative departments must be heard at the session for which they were summoned, without prejudice to the possibility that the debate is continued at subsequent sessions following a decision of the respective House. The discussion may not extend to other issues than those in the questionnaire and shall be placed at the top of the session's agenda.”

⁴¹⁰ Constitution of Nicaragua art. 138/4. “The National Assembly has the following functions:

4. To request reports from Ministers and the Deputy Ministers of the state, the Public Prosecutor and the Deputy Public Prosecutor, the presidents and directors of autonomous and governmental entities which are under a strict obligation to submit them. It may also request their personal appearance and explanations. Their appearance shall be compulsory, subject to the same conditions that are observed in judicial proceedings. The unjustified non-appearance constitutes a cause for removal from office.”

⁴¹¹ Victor J. Hinojosa and Anibal S. Perez-Linan, “Presidential Survival and the Impeachment Process: The United States and Colombia,” *Political Science Quarterly* 121, no. 4 (Winter 2006/2007): 654.

investigation as an investigation concerning the president, vice presidents, and ministers. However, while there are differences in scope, both procedures are described under the same title of parliamentary investigation. The procedure to be followed is the same for all.

According to the amended Article 105 of the Constitution, titled “Criminal Liability of the President of the Republic”, a motion may be tabled by the absolute majority of the total number of deputies to investigate the president for alleged crimes. The parliament discusses the motion within one month and may decide to launch an investigation by secret ballot of three-fifths of the deputies. If an investigation is launched, a fifteen-person commission, established by political parties in parliament, conducts it and submits a report to the speaker within two months. The report is distributed to deputies within ten days and discussed in the plenary within another ten days. The parliament may then decide to refer the president to the Supreme Criminal Tribunal by secret ballot of two-thirds of the total number of deputies.

The high quorums specified in the article make it challenging to initiate and complete the parliamentary investigation procedure. Before the 2017 Constitutional Amendment, lower quorums were required⁴¹², but the amendment has made the process significantly more difficult, especially if the executive and the majority of the parliament share the same political tendency⁴¹³. On the other hand, if the president and the parliamentary majority are composed of different political parties, the president has the power to reconstruct the parliamentary structure through the renewal of elections. The president is in a superior position to the parliament, as will be mentioned later, since the

⁴¹² Turkish Constitution art. 100 (repealed). “An investigation may be requested against the Prime Minister or ministers upon the motion of at least one tenth of the total number of members of the Grand National Assembly of Turkey. The Parliament discusses this request within one month at the latest and decides by secret ballot.

If it is decided to open an investigation, an investigation will be carried out by a commission of fifteen people, which will be established by drawing names separately for each party from among the candidates nominated by the political parties in the Parliament, three times the number of members they can give to the commission, in proportion to their strength. The Commission submits its report stating the results of the investigation to the Parliament within two months. If the investigation cannot be completed within this period, the commission is given a new and definitive period of two months. It is mandatory to submit the report to the Presidency of the Turkish Grand National Assembly within this period.

The report is distributed within ten days from the date it is submitted to the Presidency, it is discussed within ten days from its distribution, and if deemed necessary, it is decided to refer the relevant person to the Supreme Court. The decision to refer to the Supreme Court can only be taken by secret vote of the absolute majority of the total number of members.

Political party groups in the Parliament cannot hold discussions or make decisions regarding the Parliamentary investigation.”

⁴¹³ Okşar, *Yürütme Erkinin Üstünlüğü*, 159.

parliament shall resort in the same way with a qualified majority, which requires 360 deputies⁴¹⁴.

The quorums for the parliamentary investigation of vice presidents and⁴¹⁵ ministers align with those prescribed for the president, rendering the imposition of responsibility on them nearly unattainable. This provision affords significant protection to vice presidents and ministers, who, being appointed by the president, benefit from a robust shield of security.

An important distinction in the parliamentary investigation process is the broader scope of liability for the president compared to vice presidents and ministers. The president can be investigated for any crimes committed, regardless of their nature, while vice presidents and ministers are only subject to investigation for crimes connected to their official duties⁴¹⁶. The constitution states that when an allegation of an offense not related to their duties comes to the fore against vice presidents and ministers, they will benefit from the provisions regarding parliamentary immunity⁴¹⁷. Recalling that vice presidents and ministers are not elected by the people but appointed by the president, such protection seems excessive.

Parliament retains the authority to initiate a parliamentary investigation even after the conclusion of the terms of the president, vice presidents, and ministers⁴¹⁸. If allegations arise suggesting that a former president, vice president, or minister committed a crime during their tenure, a parliamentary investigation becomes imperative. Consequently, establishing excessively challenging or potentially insurmountable

⁴¹⁴ Okşar, *Yürütme Erkinin Üstünlüğü*, 159.

⁴¹⁵ Turkish Constitution art. 106/5, 6, 7; “Vice-Presidents of the Republic and ministers shall be accountable to the President of the Republic. Parliamentary investigation alleging that they committed a task-related crime may be requested against the Vice-Presidents of the Republic and ministers through a motion tabled by an absolute majority of the total number of members of the Grand National Assembly of Turkey. The Assembly shall debate on this request within one month at the latest and may decide to open an investigation with a three-fifths majority in secret ballot.

Where a decision to launch an investigation is made, the investigation shall be conducted by a committee of fifteen members, chosen by lot, for each political party in the Assembly, separately from among three times candidates nominated for each seat reserved to party groups in proportion to their number of seats. The committee shall submit its report on the result of the investigation to the Office of the Speaker within two months. In case the investigation is not completed within the time allotted, the committee shall be granted a further and final period of one month.”

⁴¹⁶ Yıldız, “Amerika Birleşik Devletleri’nde Başkan Yardımcısı ile Türkiye’de Cumhurbaşkanı Yardımcısının Karşılaştırılması,” 528.

⁴¹⁷ Turkish Constitution art. 106/11. “During the term of office, for the alleged offences which are not task-related, Vice-Presidents of the Republic and ministers shall enjoy parliamentary immunity.”

⁴¹⁸ Turkish Constitution art. 105/final, “The alleged offences committed by the President of the Republic during the term of office shall be subject to the provisions of this article also after the term of office expires.”; art. 106/9. “The alleged task-related offences committed during their terms of offices shall also be subject to the provisions of paragraphs (5), (6) and (7) after the termination of their duties.”

conditions for the trial of former presidents, vice presidents, or ministers is deemed disproportionate.

The amendment broadening the scope of criminal liability for the president is praised by some⁴¹⁹, but the practical difficulties in executing the process raise concerns. The requirement of high quorums makes it practically impossible to hold the president accountable for crimes not related to their duty. As Nino points out, it is extremely difficult to obtain the quorum required for impeachment proceedings in a hyper-presidential system. It is well understood that this amended constitutional provision was designed to achieve hyper-presidentialism⁴²⁰.

In the former system, as per the now-repealed Article 113 of the Constitution, a minister faced with a parliamentary decision referring them to the Supreme Criminal Tribunal at the conclusion of a parliamentary investigation would be dismissed from their ministerial position. Likewise, if the prime minister received such a referral, the government would be considered to have resigned. However, the new system has altered the regulations concerning this scenario⁴²¹.

Under the new provisions, the tenure of a president (or vice presidents and ministers) who faces referral to the Supreme Criminal Tribunal will no longer automatically terminate. Instead, the president's term only ends if the Supreme Criminal Tribunal convicts them (or vice presidents and ministers) of a crime that disqualifies them from holding the presidential office⁴²².

Notably, one positive aspect of this regulatory change is its resolution of ambiguity surrounding the expiration of a president's term when facing referral to the Supreme Criminal Tribunal⁴²³. Okşar highlights the significant point that a president accused of a serious crime retains governance over the state during the trial, prompting

⁴¹⁹ Before the amendment, according to the Constitution, the president could only be tried for "treason". At first glance, this situation is perceived as a positive step, as advocated by the defenders of the new political system, but the great difficulty in transforming the method into practice leads us to the opposite conclusion. Thus, considering the previous paragraph, this provision protects the President for a lifetime even for crimes not related to their duty, since it is almost practically impossible to realize this control mechanism, Okşar, *Yürütme Erkinin Üstünlüğü*, 160.

⁴²⁰ Nino, "Hyperpresidentialism and Constitutional Reform in Argentina," 168.

⁴²¹ Turkish Constitution art. 113/3 (repealed). "A minister who is referred to the Supreme Court by the decision of the Grand National Assembly of Türkiye is dismissed from the ministry. If the Prime Minister is referred to the Supreme Court, the government is deemed to have resigned."

⁴²² Turkish Constitution art. 105/5. "The term of office of the President of the Republic, who is convicted by the Supreme Court of a crime that prevents from being elected, shall cease."; art. 106/10. "The term of office of the Vice-President of the Republic or minister, who is convicted by the Supreme Court of a crime that prevents from being elected, shall cease."

⁴²³ In the previous regulation, there was no explanation as to whether the president, who was referred to the Supreme Court, should continue the duty, and it was a controversial issue in doctrine; Okşar, *Yürütme Erkinin Üstünlüğü*, 161; Keser, "Başkanlık Sisteminde Yasama ve Yürütme Organları Arasındaki Karşılıklı Etkileşim Araçları Açısından Türkiye-ABD Hükümet Sistemlerinin Karşılaştırılması," 177.

discussions concerning the political legitimacy of their authority. This raises questions regarding the legitimacy and legality of political decisions made by the president during this period, which warrants further examination of power dynamics and their implications for future governance⁴²⁴.

At this juncture, it is imperative to examine the president's authority to call for new elections. The Constitution explicitly stipulates that "*the President of the Republic, regarding whom an investigation is decided to be launched, cannot decide to hold elections*"⁴²⁵. However, given that the quorum for proposing a motion requires an absolute majority of deputies, equivalent to 301 deputies, a president facing perceived threats may exploit the opportunity to trigger a fresh election during the motion's proposal stage⁴²⁶. It is noteworthy that the president is not obligated to seek consultation with any other authority when exercising this power.

Another important issue that needs to be examined pertains to the Supreme Criminal Tribunal. The trial therein is conducted by the Constitutional Court⁴²⁷ and the president has a great influence on the appointments of its members. With the capacity to appoint twelve out of fifteen members of the Constitutional Court⁴²⁸, the president evidently possesses considerable leverage to shape the outcome of the trial, both through pre-trial appointments and potential appointments in the event of vacancies arising during the trial proceedings⁴²⁹.

In the United States, under such circumstances, the authority to impeach rests with the House of Representatives⁴³⁰. To impeach the president, a simple majority of the members of the House of Representatives present suffices. Subsequently, the trial is

⁴²⁴ Okşar, *Yürütme Erkinin Üstünlüğü*, 162.

⁴²⁵ Turkish Constitution art. 105/4.

⁴²⁶ Okşar, *Yürütme Erkinin Üstünlüğü*, 161.

⁴²⁷ Turkish Constitution art. 148/6. "The Constitutional Court in its capacity as the Supreme Court shall try, for offences relating to their functions, the President of the Republic, the Speaker of the Grand National Assembly of Turkey, Vice-Presidents of the Republic, Ministers, presidents and members of the Constitutional Court, Court of Cassation, Council of State, Council of Judges and Prosecutors, Court of Accounts, and Chief Public Prosecutors and Deputy Public Prosecutors."

⁴²⁸ Turkish Constitution art. 146/3. "The President of the Republic shall appoint three members from the Court of Cassation, two members from Council of State from among three candidates to be nominated, for each vacant position, by their respective general assemblies, from among their presidents and members; three members, at least two of whom being law graduates, from among three candidates to be nominated for each vacant position by the Council of Higher Education from among members of the teaching staff who are not members of the Council, in the fields of law, economics and political sciences; four members from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteurs of the Constitutional Court."

⁴²⁹ Battal Yilmaz, *The Presidential System in Turkey: Opportunities and Obstacles* (Springer International Publishing, 2018): 47; Okşar, *Yürütme Erkinin Üstünlüğü*, 162.

⁴³⁰ US Constitution art. 1 sec. 2. "The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment."

conducted in the Senate under the presidency of the chief justice, and if two-thirds of the members present agree, the accused is considered guilty⁴³¹.

Upon examining the impeachment rules of Latin American presidential systems, it is generally observed that Turkey, in comparison, attempts to complicate the impeachment process by introducing numerous detailed steps, making it practically impossible to execute. First and foremost, unlike Turkey, Latin American presidential systems have not set a high threshold, such as a majority of all members, for proposing a motion to initiate an investigation. While constitutional provisions generally do not delineate specific rules on this matter, Article 93 of the Uruguayan Constitution stipulates that the petition is to be initiated by a party or a party member. For instance, in Brazil in the year 2016, the impeachment of Dilma Rousseff was petitioned through the submission of requests by 37 members of the Chamber of Deputies⁴³². According to the Regulations of the Congress of Peru, a request for presidential vacancy must be formulated through an agenda motion signed by no less than 20 percent of the legal number of congressmen, i.e., 26 out of 130⁴³³.

In bicameral legislatures, the lower house typically initiates impeachment proceedings, while the upper house conducts the trial and decides on the removal or acquittal of the president. The voting threshold for decisions in the upper house is commonly established at a two-thirds majority. However, the number of members required for the lower house to bring charges varies among countries. For instance, in

⁴³¹ US Constitution art. 1 sec. 3. "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present."

⁴³² Rodrigo Capelo, "O que diz o pedido de H lio Bicudo para o impeachment da presidente Dilma Rousseff," *Epoca*, December 4, 2015, <https://epoca.globo.com/tempo/noticia/2015/12/o-que-diz-o-pedido-de-helio-bicudo-para-o-impeachment-da-presidente-dilma-rousseff.html>.

⁴³³ Gianella Tapullima, "Es cierto que la  ltima moci n de vacancia contra Pedro Castillo es la primera presentada con 67 firmas de congresistas," *Ojo P blico*, November 30, 2022, <https://ojo-publico.com/3929/es-cierto-el-dato-malaga-sobre-firmas-mocion-vacancia>.

Argentina⁴³⁴, Brazil⁴³⁵, the Dominican Republic⁴³⁶, and Paraguay⁴³⁷, charges require the support of two-thirds of the lower house members, while in Mexico⁴³⁸, an absolute majority is sufficient. In some countries, as in Turkey, admitted accusations are sent to the Supreme Court⁴³⁹.

The rapid impeachment of Fernando Lugo in Paraguay in 2012, his removal from office because of the interpretation of the article broadly (“poor performance of his duties”), and the constitutional issue arising from the request for Lugo’s defense within a single day during this process present a notable constitutional concern⁴⁴⁰. In Latin America, there are many instances where presidents who fail to secure a parliamentary majority are removed from office without a solid justification. Some of these instances have led to deadly states of emergency⁴⁴¹. Additionally, the provision in the Turkish constitution stating, “*The President of the Republic regarding whom an investigation is decided to be launched cannot decide to hold elections.*” may be viewed as a development when compared with some Latin American presidential systems. The declaration of

⁴³⁴ Constitution of Argentina art. 53. “Only the Chamber of Deputies has the right to bring charges before the Senate against the President, the Vice President, the Chief of the Cabinet of Ministers, the Ministers, and the members of the Supreme Court, in cases where they are allegedly responsible for poor performance or for committing an offense in carrying out their duties, or for common crimes, after being apprized of [the charges] and having declared by a two-thirds majority of the members present that there is cause for bringing an action.”

⁴³⁵ Constitution of Brazil art. 51. “The Chamber of Deputies has exclusive power: to authorize, by two-thirds of its members, institution of legal charges against the President and Vice-President of the Republic and the Ministers of the Federal Government;”

⁴³⁶ Constitution of Dominican Republic art. 80. “The exclusive powers of the Senate are: To be familiar with the accusations made by the Chamber of Deputies against the public officials designated in Article 83, section 1. The declaration of culpability leaves the person stripped of their office, and may not exercise any public office, whether or not by popular election, for a term of ten years. The person so stripped shall remain subject, if that is the case, to be accused and judged before the ordinary courts, in accordance with the law. This decision shall be adopted with the vote of two thirds of the membership.”

⁴³⁷ Constitution of Paraguay art. 225/2. “The accusation will be formulated by the Chamber of Deputies, by a majority of two-thirds. It will correspond to the Chamber of Senators, by absolute majority of two-thirds, to judge in public trial those accused by the Chamber of Deputies and, in such case, to declare them guilty, for the sole purpose of removing them from their offices. In the cases of supposed commission [comisión] of crimes, the prior records [antecedentes] will be passed on to the ordinary justice.”

⁴³⁸ Constitution of Mexico art. 110/4. “The procedure shall be as follows: the House of Representatives shall substantiate the case, shall hear the accused and the absolute majority of the members of the House shall declare the impeachment. Then the House of Representatives shall submit the impeachment to the Senate.”

⁴³⁹ Constitution of Costa Rica art. 121/9. “In addition to the other attributions that this Constitution confers on it, it corresponds exclusively to the Legislative Assembly:

To admit or not the accusations interposed against whoever is exercising the Presidency of the Republic, Vice Presidents, members of the Supreme Powers and Diplomatic Ministers, declaring by the two-thirds part of votes of the total of the Assembly if [a] cause should be formed or not against them, placing them, in [the] affirmative case, at the disposition of the Supreme Court of Justice for its judgment;”

⁴⁴⁰ Rebecca Szucs, “A Democracy’s “Poor Performance”: The Impeachment of Paraguayan President Fernando Lugo,” *George Washington International Law Review* 46, no. 2 (2013-2014).

⁴⁴¹ Cesar Landa Arroyo, Maria Bertel and Luis A. Lopez Zamora, “Peru,” in *2022 Global Review of Constitutional Law*, ed. Richard Albert et. al. (2022): 288.

“*Muerte cruzada*” (mutual death) by Ecuador’s President Guillermo Lasso in response to the initiation of an impeachment procedure against him has led to a constitutional crisis⁴⁴².

3.2.4 Budget

Financial powers were one of the first to develop in parliaments throughout history⁴⁴³. The principle of “no taxation without representation” gave rise to the principle that taxes can only be imposed with the grant of parliament. Similarly, just as a law is needed to collect taxes, a law is also needed to spend the taxes collected. Hence, a budget law is required to provide legality for expenditures⁴⁴⁴.

Following the 2017 amendment, Articles 161, 162, 163, and 164 of the Turkish Constitution on the budget were reconsidered, with Article 161 now regulating the budget and budget process under the title “Budget and Final Account”. Article 161 specifically empowers the president to propose budget and final accounts laws.

Under the old system, the budget bill submitted to parliament by the Council of Ministers underwent scrutiny within the Planning and Budget Commission, with a fifty-five-day deliberation. This commission was composed of forty members, with twenty-five members from the ruling party holding the authority to amend the budget proposal. However, the new system retains the reference to the budget proposal to the Planning and Budget Commission, albeit with changes in commission composition due to the constitutional amendment⁴⁴⁵.

The amendment abolished the article pertaining to the number of members of the commission, with the distribution of members now determined according to the Rules of Procedure. The Planning and Budget Commission formed following the 2023 elections consists of thirty members, with eighteen affiliated with the People’s Alliance and twelve from opposition parties⁴⁴⁶.

Another change pertains to the provisional budget. Under the previous system, the parliament determined the provisional budget appropriations based on a certain percentage of the budget initiation appropriations from the previous year. However, with the new system, the parliament’s failure to enact the budget law allows the president to

⁴⁴² Gustavo Prieto, “Ecuador’s Mutual Death Clause,” *Verfassungsblog*, May 29, 2023, <https://verfassungsblog.de/ecuadors-mutual-death-clause/>.

⁴⁴³ UK Bill of Rights 1689.

⁴⁴⁴ Gözler, *Türk Anayasa Hukuku Dersleri*, 269.

⁴⁴⁵ Abdülkerim Çalışkan, Pınar Bengi Kaya and Merve Malak, “Cumhurbaşkanlığı Hükümet Sisteminin Bütçe Sürecine Etkisi,” *Ankara Hacı Bayram Veli Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 22, no. 3 (2020) 731.

⁴⁴⁶ “TBMM’de Komisyonların Yeni Üyeleri Belli Oldu,” *Anka Haber*, June 14, 2023, https://ankahaber.net/haber/detay/tbmmde_komisyon_uyeleri_belli_oldu_144185.

implement the previous year's budget, adjusted for revaluation until a new budget law passes. This grants the executive branch the ability to collect taxes and spend without legislative consent, a departure from both the presidential and parliamentary systems⁴⁴⁷. It has been criticized for disrupting checks and balances. Scholars have rightly criticized this power vested in the president, contending that it goes against the foundational principle of a rigid separation of powers, a cornerstone of the presidential system⁴⁴⁸. Gözler argues in this context that a parliament that is stripped of its budgetary authority is nothing but a "pseudo-parliament" (*sözde parlamento*⁴⁴⁹).

Another regulation introduced with the constitutional amendment is the abolition of the provision on the reading and approval of institutional budgets in "sections" in the plenary. In this context, it has been decided to read and approve institutional budgets without deliberation⁴⁵⁰. These regulations take away the most important oversight tool of the opposition over the executive⁴⁵¹.

This departure from the United States model is noteworthy, where the president lacks the direct capability to submit the budget bill to Congress; such proposals must originate from a member of Congress⁴⁵². Notably, the president of the US is unable to independently collect taxes or authorize expenditures without the enactment of a budget law. The exclusive control of the budget by the legislature necessitates a collaborative approach, compelling presidents to negotiate and find common ground with Congress⁴⁵³.

Unlike the US, where the president cannot independently submit budget bills, in Latin American presidential systems, like Turkey, the executive branch is responsible for drafting budget bills⁴⁵⁴. Latin American presidential systems offer varied solutions if the legislature fails to adopt the budget bill proposed by the president. As in Turkey, the continuation of the previous year's budget is enshrined in the constitutions of the

⁴⁴⁷ Gözler, *Elveda Anayasa*, 79-80.

⁴⁴⁸ Doğan and Geyik, "Cumhurbaşkanlığı Hükümet Sisteminde Kuvvetler Ayrılığı İlkesi," 36; Yılmaz, *The Presidential System in Turkey*, 56; Okşar, *Yürütme Erkinin Üstünlüğü*, 163.

⁴⁴⁹ Gözler, *Elveda Anayasa*, 80.

⁴⁵⁰ Çalışkan, Kaya and Malak, "Cumhurbaşkanlığı Hükümet Sisteminin Bütçe Sürecine Etkisi," 732.

⁴⁵¹ Yılmaz, *The Presidential System in Turkey*, 56; Okşar, *Yürütme Erkinin Üstünlüğü*, 163; Bektaş, "Cumhurbaşkanlığı Hükümet Sisteminde Yasama-Yürütme İlişkisi ve Bu Sistemin Türkiye Demokrasisine Etkileri," 208; Bayram Doğan, "Cumhurbaşkanlığı Hükümet Sisteminde Cumhurbaşkanlığı Kararnamelerinin Yasama Yetkisinin Devredilmezliği İlkesi Bağlamında Değerlendirilmesi," *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* 28, no. 3(2020): 991-992; Doğan and Geyik, "Cumhurbaşkanlığı Hükümet Sisteminde Kuvvetler Ayrılığı İlkesi," 36.

⁴⁵² Okşar, *Yürütme Erkinin Üstünlüğü*, 163.

⁴⁵³ Gözler, *Elveda Anayasa*, 77.

⁴⁵⁴ "Budget Bills," *Constitute Project*, <https://www.constituteproject.org/constitutions?key=budget>.

Dominican Republic⁴⁵⁵, Guatemala⁴⁵⁶, Honduras⁴⁵⁷, Paraguay⁴⁵⁸, and Venezuela⁴⁵⁹. In the constitutions of Bolivia⁴⁶⁰, Chile⁴⁶¹, and Colombia⁴⁶², if the legislature does not adopt the budget, the budget bill still becomes law. In the Ecuadorian constitution, the situation is a little more complex. Accordingly, if the National Assembly does not announce its decision within the prescribed time limit, the draft budget automatically enters into force. If the National Assembly objects to the draft budget, the executive branch shall be given ten days to accept and address the objections by submitting a revised proposal to the National Assembly or to maintain its original proposal. The National Assembly may then, within the following ten days and through a single debate, confirm its objections with the approval of at least two-thirds of its members. In the absence of such approval, the draft budget or budget plan shall be deemed to enter into force after its second submission by

⁴⁵⁵ Constitution of Dominican Republic art. 239. “When the Congress has not approved the project of Law of General Budget of the State later than the 31st of December, the Law of General Budget of the State of the previous year shall rule, with the adjustments given in the Organic Law of Budget, until its approval is produced.”

⁴⁵⁶ Constitution of Guatemala, art. 171/b. “[The following attributions] also correspond to the Congress: To approve, modify or disapprove the Budget of Revenues and Expenditures of the State at the latest 30 days prior to its entrance into effect. The Executive must send the budget bill to the Congress with one hundred and twenty days notice prior to the start of the fiscal year. If by the time the fiscal year begins, the budget has not been approved by the Congress, the budget in effect in the previous fiscal year will again be valid, which can be modified or adjusted by the Congress;”

⁴⁵⁷ Constitution of Honduras art. 368. “The organic budget law shall stipulate all matters relating to the preparation, calculation, execution and liquidation of the budget. When the budget for a new fiscal year has not been voted at the end of the fiscal year, the one corresponding to the previous period shall continue in effect.”

⁴⁵⁸ Constitution of Paraguay art. 217. “If the Executive Power, for any reason, does not present to the Legislative Power the draft of the General Budget of the Nation within the established time periods, or if the same was rejected in accordance with the previous Article, the Budget of the current fiscal exercise continues to be in force.”

⁴⁵⁹ Constitution of Venezuela art. 313/1. “The economic and financial management of the State shall be governed by a budget approved annually by law. The National Executive shall submit the draft Budget Act to the National Assembly, at the time prescribed by the organic act. If the Executive Power fails for any reason to submit the budget bill within the time limit established by law, or the bill is rejected, the budget for the current fiscal year shall remain in effect.”

⁴⁶⁰ Constitution of Bolivia art. 158/I-11. I. “The attributes of the Pluri-National Legislative Assembly, in addition to those determined by this Constitution and the law are the following:

11. To approve the General State Budget presented by the Executive Organ. Once the draft law is received, it must be considered by the Pluri-National Legislative Assembly within the term of sixty days. In case it is not approved within this time frame, the draft law shall be considered approved.”

⁴⁶¹ Constitution of Chile art. 67/1. “The Budget Law bill shall be presented by the President of the Republic to the National Congress, at least three months prior to the date in which it must start to take effect; and if the Congress does not dispatch it within sixty days of its presentation, the bill presented by the President of the Republic will be effective.”

⁴⁶² Constitution of Colombia art. 348. “If Congress does not issue the budget, the one presented by the government shall apply within the limits of the preceding article; should the budget not be presented by the same deadline, that of the previous year shall apply, but the government may reduce expenditures and consequently eliminate or reshuffle jobs when the computations of the revenues of the new fiscal year so mandate.”

the executive branch. The previous budget shall remain in force until the budget for the year in which the president takes office is duly approved⁴⁶³.

While the budget serves as a critical mechanism for checks and balances against the president in the United States, it notably consolidates power in the president's hands within Latin American and Turkish hyper-presidential systems, often sidelining the legislature.

3.2.5 Constitutional Review of Laws and Other Acts of Parliament

The constitutional review of parliamentary acts brings along various views in terms of democracy. According to Shapiro and Stone, constitutional courts help to revitalize parliamentary activity by redressing inequities that regulate interactions between the majority and the opposition⁴⁶⁴. Ginsburg suggests that in a multiparty system, opposition parties, when unable to gain political power, resort to minimizing losses through tools like constitutional review, offering an alternative platform to challenge the majority⁴⁶⁵.

However, contrasting views warn of potential dangers to democracy. Critics emphasize the risk of non-representative organs controlling effective political authorities⁴⁶⁶. According to Landfried, courts with limited democratic legitimacy

⁴⁶³ Ecuador Constitution art. 295. "The Executive Branch shall submit the draft annual budget and the four-year budget plan to the National Assembly within the first ninety (90) days of its term of office and, in subsequent years, sixty (60) days before the start of the respective fiscal year. The National Assembly shall adopt or object to the draft annual budget and the four-year budget plan in the following thirty (30) days and in a single debate. Should the National Assembly fail to announce its decision within this period, the draft budget and plan prepared by the Executive Branch shall enter into force. The objections of the National Assembly shall refer only to the areas of revenue and spending and cannot alter the overall amount of the draft budget.

If the National Assembly objects to the draft budget or plan, the Executive Branch may, within ten days, accept said objection and submit a new proposal to the National Assembly, or it may confirm its original proposal.

The National Assembly may, in the following ten days, confirm its objections, in a single debate, with the vote of two thirds of its members. Failing this, the draft budget or budget plan sent a second time by the Executive Branch shall enter into force.

The former budget shall remain in force until the budget of the year in which the President of the Republic takes office is passed. Any increase in spending during the execution of the budget shall be approved by the National Assembly, within the limits established by law.

All the information on the process of drafting, adopting and executing the budget shall be public and shall be permanently disseminated among the population through the most appropriate media."

⁴⁶⁴ Martin Shapiro and Alec Stone, "The New Constitutional Politics of Europe," *Comparative Political Studies* 26, no. 4 (January 1994): 406. <https://doi.org/10.1177/0010414094026004>.

⁴⁶⁵ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003), 25.

⁴⁶⁶ John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Harvard University Press: 1938), 4-5; Erdoğan Teziç, "Kanunların Anayasaya Uygunluğunun "Esas" Açısından Denetimi," *Anayasa Yargısı Dergisi* 2 (1986): 25; Jeremy Waldron, "A Right-Based Critique of Constitutional Rights," *Oxford Journal of Legal Studies* 13, no. 1 (Spring 1993): 20; Shapiro and Stone, "The New Constitutional Politics of Europe," 406.

exceeding their competencies undermine democracy, citing concerns about constitutional court judges making decisions beyond their scope⁴⁶⁷ and the potential misuse of annulment actions for political gains by the opposition⁴⁶⁸. At present, a similar discourse is on the agenda in Turkey. The country is undergoing one of the most significant constitutional crises in its history. Due to the subject matter of this thesis, it is imperative to discuss this constitutional crisis under this heading.

The Constitution mentions three different ways of applying to the Constitutional Court. Hence, laws and other acts are reviewed constitutionally with the tools of “action for annulment,” “contention of unconstitutionality,” and “constitutional complaint (individual application)” according to the procedure of applying to the Constitutional Court. As important as the annulment action in this context as it provides the parliamentary opposition with political leverage and the potential to limit the enactment of new legislation⁴⁶⁹, the individual application method is also important as it is extensively employed by opposition politicians, situated within the context of the ongoing constitutional crisis.

Constitutional review serves as a mechanism in Turkey for the opposition parties to mitigate their losses and control legislative acts passed by the parliamentary majority, as well as the executive’s presidential decrees⁴⁷⁰. Accordingly, the norms subject to the supervision of the Constitutional Court are laws, presidential decrees, rules of procedure of the parliament, and constitutional amendments. However, it should be noted that constitutional amendments shall be examined only in terms of form. And the Constitutional Court shall examine the presidential decrees if they are not issued during a state of emergency or in time of war. Apart from these, the constitutionality of some parliamentary decisions is also examined by the Constitutional Court. This issue will be examined below.

⁴⁶⁷ Christine Landfried, “The Impact of the German Constitutional Court on Politics and Policy Output,” *Government and Opposition* 20, no. 4 (Autumn 1985): 535.

⁴⁶⁸ Landfried, “The Impact of the German Constitutional Court on Politics and Policy Output,” 541.

⁴⁶⁹ European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament* 497/2008 (Strasbourg: November 15, 2010): 28; Serdar Gülener and İrfan Haşlak, “Relations between Politics and Constitutional Review in Turkey with Special Reference to the Referrals of Republican People’s Party: 2002-2010 Period,” *Alternatives: Turkish Journal of International Relations* 10, no. 2&3 (2011): 5.

⁴⁷⁰ Turkish Constitution art. 148/1. “The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, presidential decrees and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form. However, presidential decrees issued during a state of emergency or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.”

According to Article 150, the president, the two political party groups having the largest number of deputies in the parliament, and at least one-fifth of the total number of deputies have the right to apply for annulment action directly to the Constitutional Court based on the assertion of unconstitutionality. Prior to the constitutional amendment, Article 150 of the Constitution granted the right to initiate an annulment action to members of the parliamentary groups of the ruling party and the main opposition party, as well as to a number of parliamentarians constituting at least one-fifth of the total members. With the amendment, those who actually possess this right have not changed. Only the phrase “ruling party and main opposition party” has been replaced with “the two political parties with the highest number of members in parliament”.

Turkey has witnessed instances before where the decisions of the Constitutional Court were not adhered to by lower courts. The non-compliance with the decisions of the Constitutional Court and questioning of its legitimacy commenced with the Can Dündar ruling in the year 2016. After the Constitutional Court ruled that Dündar’s freedom of expression and other rights were violated, the President notably expressed his disagreement, “*I neither obey nor respect the Constitutional Court’s ruling*⁴⁷¹”. In 2018, the Constitutional Court found that the detention of two journalists, Mehmet Altan and Şahin Alpay, violated their rights to liberty and freedom of expression. The Turkish government criticized this decision, arguing that the Constitutional Court had exceeded its constitutional boundaries and overstepped its jurisdiction⁴⁷². Subsequently, two Turkish heavy criminal courts refused to apply these judgments, citing reasons similar to those raised by the government. A similar response from another court of first instance led to another crisis in 2020 following the Berberoğlu case⁴⁷³.

The most recent constitutional crisis is related to the Constitutional Court’s decision on Can Atalay. Can Atalay has been in prison since April 2022 on charges of attempting to overthrow the government of the Republic of Turkey over the Gezi Park trial. After Atalay was elected as a deputy from the TİP in the May 2023 elections, his lawyers requested his release, citing Article 83/1 of the Constitution, in order for him to fulfill his duties as a member of parliament, which regulates parliamentary immunity.

⁴⁷¹ “I Neither Obey Nor Respect Constitutional’s Court’s Ruling,” *Presidency of the Republic of Türkiye*, February 28, 2016, <https://www.tccb.gov.tr/en/news/542/39958/anayasa-mahkemesinin-kararina-uymuyorum-saygi-da-duymuyorum>.

⁴⁷² “Constitutional Court Exceeded Limits, Turkish Deputy PM Says,” *Hürriyet Daily News*, January 14, 2018, <https://www.hurriyetdailynews.com/constitutional-court-exceeded-limits-turkish-deputy-pm-says-125715>.

⁴⁷³ Emre Turkut and Ali Yıldız, “The Individual Application Mechanism is on the Verge of Collapse, and so is Turkish Constitutionalism,” *Verfassungsblog*, November 23, 2023, <https://verfassungsblog.de/the-individual-application-mechanism-is-on-the-verge-of-collapse-and-so-is-turkish-constitutionalism/>.

After the Court of Cassation rejected the release application, Atalay submitted an individual application to the Constitutional Court. The Court ruled by a majority that Atalay's continued detention violates his right to be elected and engage in political activities⁴⁷⁴ and his right to personal liberty and security⁴⁷⁵. The Court, referring to its

⁴⁷⁴ Turkish Constitution art. 67. "In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, to engage in political activities independently or in a political party, and to take part in a referendum.

Elections and referenda shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, direct, universal suffrage, and public counting of the votes. However, the law determines applicable measures for Turkish citizens abroad to exercise their right to vote. All Turkish citizens over eighteen years of age shall have the right to vote in elections and to take part in referenda.

The exercise of these rights shall be regulated by law.

Privates and corporals at arms, cadets, and convicts in penal execution institutions excluding those convicted of negligent offences shall not vote. The necessary measures to be taken to ensure the safety of voting and the counting of the votes in penal execution institutions and prisons shall be determined by the Supreme Board of Election; such voting is held under the on-site direction and supervision of authorized judge.

The electoral laws shall be drawn up so as to reconcile the principles of fair representation and stability of government.

Amendments to the electoral laws shall not apply to the elections to be held within one year from the entry into force date of the amendments."

⁴⁷⁵ Turkish Constitution art. 19. "Everyone has the right to personal liberty and security.

No one shall be deprived of his/her liberty except in the following cases where procedure and conditions are prescribed by law:

Execution of sentences restricting liberty and the implementation of security measures decided by courts; arrest or detention of an individual in line with a court ruling or an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor, or for bringing him/her before the competent authority; execution of measures taken in conformity with the relevant provisions of law for the treatment, education or rehabilitation of a person of unsound mind, an alcoholic, drug addict, vagrant, or a person spreading contagious diseases to be carried out in institutions when such persons constitute a danger to the public; arrest or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued.

Individuals against whom there is strong evidence of having committed an offence may be arrested by decision of a judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence, as well as in other circumstances prescribed by law and necessitating detention. Arrest of a person without a decision by a judge may be executed only when a person is caught in flagrante delicto or in cases where delay is likely to thwart the course of justice; the conditions for such acts shall be defined by law.

Individuals arrested or detained shall be promptly notified, in all cases in writing, or orally when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before a judge.

The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in case of offences committed collectively within at most four days, excluding the time required to send the individual to the court nearest to the place of arrest. No one can be deprived of his/her liberty without the decision of a judge after the expiry of the above specified periods. These periods may be extended during a state of emergency or in time of war.

The next of kin shall be notified immediately when a person has been arrested or detained.

Persons under detention shall have the right to request trial within a reasonable time and to be released during investigation or prosecution. Release may be conditioned by a guarantee as to ensure the presence of the person at the trial proceedings or the execution of the court sentence.

Persons whose liberties are restricted for any reason are entitled to apply to the competent judicial authority for speedy conclusion of proceedings regarding their situation and for their immediate release if the restriction imposed upon them is not lawful.

Damage suffered by persons subjected to treatment other than these provisions shall be compensated by the State in accordance with the general principles of the compensation law."

previous judgments⁴⁷⁶, recalled that the Constitution imposes on the legislator the responsibility to clarify the meaning of the term “cases within the scope of Article 14” in the second paragraph of Article 67 of the Constitution and does not give the judiciary an explicit power to determine, by interpretation, the offenses falling within the scope of Article 14⁴⁷⁷. Despite the Constitutional Court’s decision, the lower court referred the case to the Court of Cassation. The 3rd Criminal Chamber of the Court of Cassation assumed jurisdiction and issued an opinion. Accordingly, the Chamber criticized the majority of the Constitutional Court, which issued the decision in question, of acting with the comfort of being unchecked, of assuming the role of legislator and super appeals court, of making the Constitution unenforceable, and consequently of losing its legitimacy in the eyes of the people. Finally, it calls for a criminal investigation against the Constitutional Court judges for “exceeding their constitutional powers”⁴⁷⁸. However, this accusation faces legal challenges under Article 16 of Law No. 6216, which states that any investigation into alleged crimes committed by the members of the Constitutional Court would need to be authorized by the General Assembly of the Constitutional Court itself – composed of the same judges who ruled on the Atalay case. As noted by scholars Balamir Coşkun and Tombuş, this unprecedented move by the Court of Cassation appears to reflect an attempt to sway public opinion through a political statement⁴⁷⁹.

Although the executive holds considerable influence over the judiciary, both the President and his political ally, the leader of the MHP, have shown resistance to Constitutional Court rulings that favor the opposition. In this constitutional crisis, the President expressed his dissatisfaction with recent decisions, stating that “*unfortunately, the Constitutional Court has made many mistakes in a row at this point, which seriously saddens us*”⁴⁸⁰. At the same time, the leader of the MHP has called for the closure of the Constitutional Court⁴⁸¹. The Can Atalay case exemplifies the tensions between different branches of government, with the Court of Cassation openly challenging the

⁴⁷⁶ Turkish Constitutional Court, Ömer Faruk Gergerlioğlu, 2019/10634, July 1, 2021, para. 98; Turkish Constitutional Court, Kadri Enis Berberoğlu (2), 2018/30030, September 17, 2020, para. 89.

⁴⁷⁷ Turkish Constitutional Court, Şerafettin Can Atalay (2), 2023/53898, October 25, 2023, para. 47.

⁴⁷⁸ Doruk Erhan, “Downhill All the Way,” *Verfassungsblog*, November 15, 2023, <https://verfassungsblog.de/downhill-all-the-way/>.

⁴⁷⁹ Gülçin Balamir Coşkun and Ertuğ Tombuş, “The Rule of Arbitrariness as the New Constitutional Order in Turkey,” *Verfassungsblog*, November 14, 2023, <https://verfassungsblog.de/the-rule-of-arbitrariness-as-the-new-constitutional-order-in-turkey/>.

⁴⁸⁰ Ece Toksabay, “Erdoğan Stokes Judicial Crisis, Calling for New Constitution,” *Reuters*, November 11, 2023, <https://www.reuters.com/world/middle-east/turkeys-erdogan-spat-among-two-top-courts-constitutional-court-makes-mistake-2023-11-10/>.

⁴⁸¹ “Government Ally Bahçeli Says Both HDP and Constitutional Court Should Be Closed,” *Bianet English*, April 1, 2021, <https://bianet.org/haber/government-ally-bahceli-says-both-hdp-and-constitutional-court-should-be-closed-241695>.

Constitutional Court's authority. These developments, coupled with the executive's influence over the judiciary and discussions about potentially closing the Constitutional Court, reflect broader political tensions. This discourse resonates with the ruling party's narrative of drafting a new constitution, which could potentially reduce oversight of the executive branch⁴⁸².

Similar crises were seen in Brazil under Bolsonaro. President Bolsonaro initiated a campaign of critique against the Justices of the Brazilian Federal Supreme Court⁴⁸³ while exhorting his supporters to protest the Court, alleging its purported overreach of constitutional authority, particularly as the Court's decisions increasingly ruled against his interests. His supporters evoked Article 2 of the Brazilian Constitution, which delineates independence and harmonious coexistence among the three branches of government. They asserted that the Federal Supreme Court ought to be restrained, as they perceived it as a threat to independence and harmony among the branches. However, Bolsonaro's supporters expanded their advocacy to include a supposed 'constitutional role' assigned to the military by the Constitution in circumstances involving disputes among the three branches of government. Article 142 of the Constitution delineates the military's responsibility to "*guarantee the constitutional branches of government and, on the initiative of any of these branches, law and order*". Bolsonaro's supporters contended that the President may invoke the military forces as a constitutional moderator to reinstate peace and order should the Supreme Court err, as articulated in Article 142 of the Constitution. However, as Archegas and Kreuz suggest, the Constitution does not delineate the parameters of this moderation or the procedural mechanisms by which any branch of government may summon the military forces⁴⁸⁴.

The constitutional judiciary plays a crucial role for the opposition in countering the majority. The challenges faced by this institution highlight concerns over the weakening of checks and balances. As the judiciary's independence is undermined, the mechanism it supports, including the opposition's ability to exercise oversight, are similarly weakened in a compounding way. Although Brazil's fragmented parliament and

⁴⁸² Balamir Coşkun and Tomuş, "The Rule of Arbitrariness as the New Constitutional Order in Turkey".

⁴⁸³ Andrew Fishman, "Brazil's President Goes to War with Democratic Institutions – And Hopes the Military Has His Back," *The Intercept*, May 4, 2020, <https://theintercept.com/2020/05/04/brazil-bolsonaro-military-coup/>.

⁴⁸⁴ João Victor Archegas and Leticia Kreuz, "The 'Constitutional Military Intervention': Brazil on The Verge of Democratic Breakdown," *Verfassungsblog*, June 4, 2020, <https://verfassungsblog.de/the-constitutional-military-intervention-brazil-on-the-verge-of-democratic-breakdown/>.

relatively independent judiciary offer some hope for resolution, Turkey is experiencing a more significant and complex manifestation of these challenges.

3.2.5.1 Constitutional Review of Parliamentary Decisions

Parliamentary decisions are generally composed of the internal working order and activity of the parliament or decisions taken within the framework of the parliament's relations with the executive or judiciary⁴⁸⁵. Nonetheless, the question arises as to whether the exclusion of parliamentary decisions from constitutional review aligns with the principle of rule of law. Various opinions exist on this matter, contributing to ongoing scholarly debate.

Some scholars argue that the principle of the constitutional state is damaged in the case of parliamentary decisions reviewed by the Constitutional Court. They argue that such reviews involve political judgments, potentially undermining democracy by blurring the separation of powers, as the judiciary may try to assume parliamentary powers⁴⁸⁶.

In Turkey, parliamentary decisions cannot be reviewed by the Constitutional Court, except in three cases. These are clearly defined in the constitution as Rules of Procedure, decisions to lift parliamentary immunity, and decisions resulting in the loss of parliamentary membership.

According to Article 85 of the Constitution, the decision to lift the parliamentary immunity of a deputy can be appealed to the Constitutional Court within seven days from the date of the decision of the Plenary for the decision to be annulled on the grounds that it is contrary to the Constitution, laws, or the Rules of Procedure. In the same way, an annulment request shall be made to the Constitutional Court for the decision to lose membership in the parliament. Decisions regarding the "loss of membership" are included in paragraphs 1, 3, and 4 of Article 84 of the Constitution. According to this, parliamentary decisions taken due to resignation, insisting on continuing a duty or service incompatible with being a deputy, and absenteeism can be reviewed constitutionally.

Notably, decisions resulting from criminal convictions that prevent parliamentary membership or restrict legal capacity are exempt from parliamentary voting and thus cannot be reviewed by the Constitutional Court⁴⁸⁷.

⁴⁸⁵ Gözler, *Türk Anayasa Hukuku Dersleri*, 248; Erdal Abdulhakimoğulları, "Türk Anayasa Hukukunda Parlamento (Meclis) Kararlarının Yargısal Denetimi Sorunu," *Yasama Dergisi* 5 (2007).

⁴⁸⁶ Abdulhakimoğulları, "Türk Anayasa Hukukunda Parlamento (Meclis) Kararlarının Yargısal Denetimi Sorunu," 25.

⁴⁸⁷ These cases are specified in paragraph 2 of Article 84 of the Constitution and paragraph 2 of Article 136 of the Rules of Procedure as convictions due to a crime preventing being elected as a member of parliament and restriction of legal capacity. Since these are the decisions that have gained the quality of final judgment, the plenary does not apply for any voting; that is, the parliament does not take a decision in accordance

The third exception to the parliamentary decision mentioned is the Rules of Procedure, which are regulated by Articles 148 and 150 of the Constitution. The rules of procedure have been considered one of the most important constitutional texts and have been described as a kind of “silent constitution⁴⁸⁸”, since they play a decisive role in affecting majority-opposition relations and are the true reflection of the parliamentary will⁴⁸⁹.

A notable instance in Turkey occurred in 2017, when the Constitutional Court invalidated a parliamentary decision amending the Rules of Procedure. The Constitutional Court subsequently determined that the parliamentary decision contravened the principle of proportionality. Specifically, the decision, which imposed a disciplinary penalty entailing a two-thirds reduction in allowances for those temporarily excluded from parliament due to expressions contrary to the administrative structure based on the indivisible unity of the country and its people. The Constitutional Court characterized the rule in question as vague, abstract, and unpredictable, which had no connection with the obligation to ensure the orderly conduct of parliamentary affairs⁴⁹⁰. Given the vagueness of the contested definition, it will be decided by the parliamentary majority whether the words and expressions used are within the scope of the parliamentary debates. This situation, notably, places opposition deputies at risk of punitive measures by the majority, hindering their ability to participate fully in legislative and oversight functions. Consequently, the rule, which could be interpreted as disproportionately limiting the opposition’s role, was seen as conflicting with the principle of a democratic state⁴⁹¹.

In light of the fact that this rule causes the deputies to be under the threat of punishment at any moment due to their expressions of opinion, it is evident that it renders freedom of expression, particularly parliamentary non-liability, practically meaningless for the deputies. With its stated nature, the impugned regulation cannot be characterized as a limitation aimed at meeting a pressing social need in a democratic society⁴⁹². As a result, on these grounds explained by the court, the aforementioned provision was annulled.

with the provisions of the Constitution and the Rules of Procedure. Therefore, it is not possible to apply to the Constitutional Court for the annulment of the action.

⁴⁸⁸ Teziç, *Anayasa Hukuku*, 70-71.

⁴⁸⁹ Turkish Constitutional Court, E. 2017/162 K. 2018/100, October 17, 2018, para. 20; Abdulhakimoğulları, “Türk Anayasa Hukukunda Parlamento (Meclis) Kararlarının Yargısal Denetimi Sorunu,” 16.

⁴⁹⁰ Turkish Constitutional Court, E. 2017/162 K. 2018/100, October 17, 2018, para. 114.

⁴⁹¹ Turkish Constitutional Court, E. 2017/162 K. 2018/100, October 17, 2018, para. 115.

⁴⁹² Turkish Constitutional Court, E. 2017/162 K. 2018/100, October 17, 2018, para. 117.

As demonstrated by the preceding instance, it is clear that the Rules of Procedure, which control the internal working order of Parliament, can potentially be used to limit the participation of opposition members in legislative activity based on their expressions in parliament.

In a landmark decision rendered in 1968, the Constitutional Court reviewed a parliamentary decision that fell beyond the purview of its customary scope of examination. The Court determined that the said parliamentary decision effectively changed the rules of procedure. Emphatically asserting its stance, the Court articulated that *“it is always possible for the Parliament to decide various rules of procedure by individual parliament decisions, thereby encouraging a trend towards avoidance of constitutional review. Considering a loophole of this nature that could be found in the Constitution would be contrary to the objective of the Constitution”*⁴⁹³.

This interpretation continued into subsequent years, with the Court stating,

*“It is clear that the nature and content of the legislative acts created by the parliament under names other than those envisaged in the Constitution and by applying other methods will be taken into account in determining whether they are subject to the review of the Constitutional Court. It is necessary to focus on the quality of the content when determining whether the review of an act of this nature falls within the jurisdiction of the Constitutional Court,...”*⁴⁹⁴

Furthermore, the Court emphasized that *“it is also a requirement of being a state with a rule of law that parliamentary acts, which do not differ in terms of value and effects, are subject to the same judicial review”*⁴⁹⁵. The Constitutional Court held the opinion that all these cited judgments pertained to parliamentary decisions effectively amending the Rules of Procedure.

However, a shift from this established interpretation occurred in 2016 when the Constitutional Court refrained from applying it in a judgment concerning the collective lifting of parliamentary immunity of 154 deputies. This was facilitated through what was framed as a “constitutional amendment” in that same year⁴⁹⁶.

While this judgment was examined below in a subsequent, it is important to note that the interpretation consistently upheld by the Constitutional Court since 1968, which arguably should have been applied in this instance. Notably, parliamentary immunities constitute decisions that are subject to the Constitutional Court’s jurisdiction. The

⁴⁹³ Turkish Constitutional Court, E. 1967/6 K.1968/9, February 27, 1968, 3.

⁴⁹⁴ Turkish Constitutional Court, E. 1996/19 K. 1996/13, May 14, 1996, 3; Turkish Constitutional Court, E. 1996/20 K. 1996/14, May 14, 1996, 2; Turkish Constitutional Court, E. 1996/21 K. 1996/15, May 14, 1996, 3; Turkish Constitutional Court, E. 2007/45 K. 2007/54, May 1, 2007, 2.

⁴⁹⁵ Turkish Constitutional Court, E. 2007/45 K. 2007/54, May 1, 2007, 2.

⁴⁹⁶ Turkish Constitutional Court, E. 2016/54 K. 2016/117, June 3, 2016.

unanimous rejection of the annulment request, following a brief examination was presented as a “constitutional amendment” but in essence constituted as a parliamentary decision to lift parliamentary immunities, prompts serious questions.

3.3 The Effects of Presidential Powers on Legislative Branch

3.3.1 Presidential Power to Legislate

According to the Turkish Constitution, the inalienable legislative power belongs to the Grand National Assembly of Turkey on behalf of the Turkish Nation⁴⁹⁷. However, the 2017 constitutional amendments have considerably shifted this balance, granting the president the authority to issue decrees independently of parliamentary approval, provided they do not contravene the law. Additionally, during a state of emergency, the president can also enact legislative decrees with wide-ranging regulatory authority, which are exempt from judicial review. But these are examined under the following heading.

The president or ministers are not empowered to propose laws to the parliament or initiate constitutional amendments. However, the president’s influence in legislative functions is facilitated through their role as a party leader, wielding political power over the deputies in their party, using mechanisms such as party discipline to ensure alignment with the president’s agenda.

Similarly, the US Constitution does not authorize presidents to propose legislation to Congress or initiate constitutional amendments. While they can communicate legislative preferences to Congress indirectly through messages or congressional members, they lack direct proposal authority. Notably, the undisciplined nature of political parties in the US means that the president typically does not lead the party.

⁴⁹⁷ Turkish Constitution art. 7. “Legislative power is vested in the Grand National Assembly of Turkey on behalf of Turkish Nation. This power shall not be delegated.”

In contrast, the constitutions of Brazil⁴⁹⁸, Chile⁴⁹⁹, Guatemala⁵⁰⁰, Nicaragua⁵⁰¹, Paraguay⁵⁰², Peru⁵⁰³, and Venezuela⁵⁰⁴ authorize the president to propose constitutional amendments.

3.3.1.1 Presidential Decrees

In the Turkish presidential system, much debate centers on the president's authority to regulate through presidential decrees, as stipulated in Article 104 of the Constitution. These decrees serve as fundamental regulatory acts concerning executive power. Issued by the President, they derive authority directly from the Constitution and are subject to review by the Constitutional Court.

Article 104/17 of the Constitution places a significant restriction on the President's decree powers, barring their issuance on matters exclusively reserved for legislation by the Constitution. In the event of a conflict between presidential decrees and the laws, the latter prevails, rendering a presidential decree null and void if the parliament passes a law on the same subject. This broad grant of power to the president in the absence of legal regulation creates a wide, unlimited, and uncertain field, raising concerns that it could potentially open the way for intrusion into the legislative domain⁵⁰⁵.

⁴⁹⁸ Constitution of Brazil art. 60/1. "Constitutional amendments may be proposed by: at least one-third of the members of the Chamber of Deputies or the Federal Senate; the President of the Republic; more than one-half of the Legislative Assemblies of units of the Federation, each manifesting its decision by a simple majority of its members."

⁴⁹⁹ Constitution of Chile art. 127/1. "The amendment bills to the Constitution may be initiated by a message of the President of the Republic or by motion of any member of the National Congress, with the limitations described in the first paragraph of Article 65."

⁵⁰⁰ Constitution of Guatemala art. 277/1. "The following have the initiative to propose reforms to the Constitution:

The President of the Republic in the Council of Ministers;

Ten or more deputies to the Congress of the Republic;

The Court of Constitutionality; and

The people [el pueblo] through a petition directed to the Congress of the Republic, by not fewer than five thousand citizens duly registered [empadronados] in the Registry of Citizens."

⁵⁰¹ Constitution of Nicaragua art. 191/2. "The right to initiate a partial reform belongs to the President of the Republic or to one-third of the members of the National Assembly."

⁵⁰² Constitution of Paraguay art. 289/2. "Twenty-five percent of the legislators of any of the Chambers of Congress, the President of the Republic or thirty thousand electors, through a signed petition[,] may request the reform."

⁵⁰³ Constitution of Peru art. 206/3. "The right to initiate a constitutional reform corresponds to the President with the approval of the Cabinet, to congressmen, and to a number of citizens equivalent to three-tenths of a percent (0.3%) of the voting population, with their signatures being verified by the corresponding electoral authority."

⁵⁰⁴ Constitution of Venezuela art. 341/1. "The procedure for adopting amendments to the Constitution shall be as follows:

1. The initiative may emanate from 15% of the citizens registered with the Civil and Electoral Registry, from 39% of the members of the National Assembly or from the President of the Republic, sitting with the Cabinet of Ministers."

⁵⁰⁵ Okşar, *Yürütme Erkinin Üstünlüğü*, 118-119.

Another limitation of presidential decrees is the field of fundamental rights and freedoms. Article 104 establishes clear limitations, explicitly stating that presidential decrees cannot regulate fundamental rights and freedoms, individual rights and duties specified in the first and second chapters, or the political rights and duties listed in the fourth chapter of the second part of the Constitution. However, the Constitution allows presidential decrees to regulate economic and social rights and duties.

Despite limitations, the Constitution empowers the president to regulate a wide scope related to executive power, especially when supported by a parliamentary majority aligned with the president's party or alliance. It is possible for the president, as "the first mover", to set the parliamentary agenda with decrees and to occupy the parliamentary work by focusing on a certain point⁵⁰⁶. For instance, should a parliament seek to nullify a decree issued by the President, it will be occupied with the enactment of laws, a process that entails specific procedural requirements and takes time, thereby inevitably focusing its agenda on this matter. In addition, the president may return the law to parliament under veto power, which will further prolong the process. In addition, if the political party or alliance led by the president has a majority in the parliament, the probability of a strong opposition by the parliament to the presidential decrees is very low.

Additionally, during emergencies, the president may issue "emergency presidential decrees", as stipulated in Article 119/6. The provision states,

"During the state of emergency, the President of the Republic may issue presidential decrees on the matters necessitated by the state of emergency without the limitation set forth in the second sentence of the seventeenth paragraph of Article 104. These decrees having the force of law shall be published in the Official Gazette and shall be submitted to the Grand National Assembly of Turkey on the same day for approval."

Such presidential decrees indicate the power to regulate with the force of law. In this context, "emergency presidential decrees" possess the capacity to both amend and abolish existing laws. Moreover, the exercise of this power is solely dependent upon the discretion of the president, who serves as the sole executive authority.

Emergency presidential decrees are exempt from any restrictions on fundamental rights, individual rights, and political rights specified in Article 104/17 of the Constitution and the suspension of such rights during emergencies, allowing for the partial or complete suspension of fundamental rights and freedoms⁵⁰⁷. Considering the weakness of political

⁵⁰⁶ Terry M. Moe and William G. Howell, "Unilateral Action and Presidential Power: A Theory," *Presidential Studies Quarterly* 29, no. 4 (December 1999): 856.

⁵⁰⁷ Article 15 of the Constitution states that the exercise of fundamental rights and freedoms may be partially or completely suspended, or measures may be taken against the guarantees envisaged for these, in times of

and judicial control in the context of these constitutional arrangements, which give wide power to the executive over fundamental rights and freedoms, there is a potential risk of the president exercising power in a manner that may appear unchecked or disproportionate during times of emergency.

Zarplı states that, in comparison to presidential decrees regulated under Article 104, those issued during emergencies, as governed by Article 119, afford the president a significantly greater degree of maneuverability. Nevertheless, he posits that this broad power is restrained by the constitutional restriction on subject matter, explicitly narrowed to encompass issues necessitated by a state of emergency. He argues that such constraints are presented as a mechanism for checks and balances within the constitutional framework⁵⁰⁸.

This study's perspective differs from Zarplı's assertion. The Constitution states that emergency presidential decrees shall be issued only on matters necessitated by the state of emergency. It is essential, however, to consider the emergency decrees that existed prior to the 2017 constitutional amendments, which were replaced by the emergency presidential decrees. According to the repealed article 121, subject matters of emergency decrees before the amendment were similarly limited only to the matters necessitated by the state of emergency⁵⁰⁹. Nevertheless, an examination of the historical application of the state of emergency in Turkey reveals instances where emergency decrees were issued on many matters seemingly unrelated to the state of emergency. A notable example is found in the most recent emergency decrees, commonly called "the July 15 decrees", where the subject matters extend beyond those directly related to the state of emergency.

Similarly, Okşar argues that concentrating such broad power, which have the potential to severely and negatively impact fundamental rights and freedoms, to a single individual undermines democratic principles and the rule of law⁵¹⁰, creating an unlimited and uncontrolled exercise of executive power, particularly during emergencies.

emergency, provided that the core area is reserved. Emergency presidential decrees, possessing legal equivalence, serve as a regulatory instrument for the executive.

⁵⁰⁸ Çağdaş Zarplı, "Cumhurbaşkanlığı Kararnamelerinin Hukuki Niteliği: Kanun Hükmünde Kararnamelerden ve ABD Başkanlık Kararnamelerinden Farklarının İncelenmesi," *OPUS International Journal of Society Researches* 15, no. 26 (2020): 4589. DOI: 10.26466/opus.736286.

⁵⁰⁹ Turkish Constitution art. 121/3 (repealed). "During the state of emergency, the Council of Ministers, convening under the chairmanship of the President, may issue decrees having the force of law on matters necessitated by the state of emergency. These decrees are published in the Official Gazette and submitted to the Turkish Grand National Assembly for approval on the same day; The period and procedure for their approval by the Parliament are determined in the Rules of Procedure."

⁵¹⁰ Okşar, *Yürütme Erkinin Üstünlüğü*, 143.

According to Article 119, emergency presidential decrees shall be published in the Official Gazette and submitted for approval to the parliament on the same day. The remainder of the article is stipulated as follows:

“Save for the situations that the Grand National Assembly of Turkey cannot convene due to war and force majeure, presidential decrees issued during the state of emergency shall be debated and concluded in the Grand National Assembly of Turkey within three months. Otherwise, the presidential decree issued in the state of emergency shall ex officio cease to have effect.”

In this regard, Zarplı highlights the immediate submission of emergency decrees to parliament for oversight⁵¹¹, although the three-month review period may be deemed lengthy, potentially enabling prolonged executive dominance.

It is due to the structure of the system that the president prepares their own policies and regulates them by themselves as the sole power. However, the Constitution does not consider a regulation conforming to the mechanism of checks and balances, and the legislative and judiciary do not have control over the presidential decrees in a way that creates an imbalance among the branches. This situation exemplifies the dominance of the executive branch.

In presidential systems, the variations in the president’s legislative power, particularly the power to issue decrees with legal force, are of utmost importance. These variations mainly highlight the distinctions present in presidential systems.

Comparatively, in the United States, the power to issue decrees is expressly withheld from the executive⁵¹². Of course, this does not mean that today the executive cannot take any regulatory action whatsoever. In this country, too, the legislature can delegate to the executive the power to elaborate certain regulations by law.

The Constitution’s framers could not have foreseen the need for federal agencies or complex regulatory bodies. As federal programs and regulations grew, Congress encountered challenges in providing specific legislation to direct their implementation, which resulted in the delegation of rule-making authority to executive agencies. A pivotal moment in this process was the case of *Yakus v. United States* in 1944, where the Supreme Court upheld broad rule-making authority delegated to an agency during World War II. This decision established a precedent for subsequent delegations of lawmaking authority to executive agencies and further contributed to the increased power of the executive. Accordingly, in order for Congress to exercise its legislative authority, it must establish the fundamental principles in the relevant domain. Therefore, it is up to

⁵¹¹ Zarplı, “Cumhurbaşkanlığı Kararnamelerinin Hukuki Niteliği,” 4590.

⁵¹² Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 123.

administrative entities to carry out this policy. Although secondary rules that are compliant with current law may be established by the administration in areas requiring administrative and technical expertise, the essence of legislative power is not delegable⁵¹³.

However, presidents have also exercised some powers during national crises without laws explicitly authorizing them to do so. Historical examples, such as Abraham Lincoln and Franklin Roosevelt, demonstrate instances where presidents exercised decree-like powers with limited opposition⁵¹⁴.

Unlike the US, a startling 95 percent of the constitutions in Latin America adopted after 1979 give presidents the power to issue decrees with legal force⁵¹⁵. It is important to note that even though presidential decrees are delegated by the legislature, they occasionally go beyond their constitutional bounds in some presidential systems. For instance, in spite of the fact that Article 49 of the Mexican Constitution forbids the delegation of power, it does permit the president to issue decrees during times of emergency that suspend constitutional protections under Article 29 and impose restrictions on international trade under Article 131. However, there were blatantly unconstitutional transfers of power in Mexico between 1917 and 1940 in a wide range of sectors, including education, industry, construction, and criminal and civil law⁵¹⁶. In practice, due to the “unified government, party discipline, and the recognition of the president as party leader”⁵¹⁷ in Mexico, legislatures frequently agree to the unconstitutional delegation of power⁵¹⁸.

Similarly, in Argentina, it is not uncommon to encounter instances of broadly delegated regulatory authority that lack specific constraints, effectively assuming the legal force without constitutional challenge. According to Article 76 of the Argentine Constitution, “*Any delegation of legislative power to the Executive Power is prohibited, except in specified matters concerning administration or public emergency, with a fixed period of time for exercise of the delegated authority, which may only be exercised within*

⁵¹³ Fallon Jr., *The Dynamic Constitution*, 263-264.

⁵¹⁴ Brian R. Sala, “In Search of the Administrative President: Presidential “Decree” Powers and Policy Implementation in the United States,” in *Executive Decree Authority*, eds. John M. Carey, Matthew Soberg, (Cambridge: Cambridge University Press, 1998): 256-257.

⁵¹⁵ Cheibub, Elkins and Ginsburg, “Still the Land of Presidentialism?”

⁵¹⁶ Ma. Amparo Casar, “Executive-Legislative Relations: The Case of Mexico (1946-1997),” *Legislative Politics in Latin America*, ed. Scott Morgenstern, Benito Nacif, (Cambridge: Cambridge University Press, 2002), 120.

⁵¹⁷ Jeffrey A. Weldon, “The Legal and Partisan Framework of the Legislative Delegation of the Budget in Mexico,” *Legislative Politics in Latin America*, ed. Scott Morgenstern, Benito Nacif, (Cambridge: Cambridge University Press, 2002), 378.

⁵¹⁸ Casar, “Executive-Legislative Relations”, 121.

the terms established by Congress.” Although some constitutional scholars assert that the constitution’s text expressly forbids delegation of powers, in practice, there have been many instances of such delegations, and the issuance of presidential decrees concerns policymaking⁵¹⁹.

Article 99.3 of the Constitution of Argentina allows for emergency decrees (*decretos de necesidad y urgencia*, DNU) under certain conditions. Presidential decrees need the unanimous consent of the entire cabinet when extraordinary circumstances prevent the normal constitutional legislative processes⁵²⁰. It is noted that Carlos Menem stands out in terms of the application of DNUs. Between 1860 and 1983, eight DNU were employed in Argentina; during Menem’s presidency, by 1996, this number had risen to approximately 400 DNU⁵²¹. Although the 1994 Constitution restricted DNUs, the tradition has not been lost that the president’s power to issue decrees under various circumstances has been extensively used to appoint Supreme Court justices⁵²², tear up the media law, and initiate new policies by decree, bypassing the legislative power⁵²³.

The emergence of COVID-19 led many countries to declare a state of emergency and impose restrictions on fundamental rights and freedoms in order to prevent loss of life. However, it is concerning that in Turkey, these rights are curtailed by presidential decrees without a formal declaration of a state of emergency. A similar situation has been observed in Argentina, where President Fernández was faced criticism for limiting numerous fundamental rights and freedoms without declaring a state of emergency, despite the challenges posed by COVID-19⁵²⁴.

The power to issue decrees is a very important aspect to consider when analyzing the hyper-presidential systems. As evidenced by numerous examples, this authority not only diminishes the effectiveness of the legislature but also poses a significant threat to the participation of the parliamentary opposition in legislative activity. The checks and balances are eroded by the president’s extensive power to issue decrees, may be leading to executive actions that infringe upon fundamental rights and constitutional boundaries.

⁵¹⁹ Rose-Ackerman, Desierto and Volosin, “Hyper-Presidentialism,” 257-258.

⁵²⁰ Rose-Ackerman, Desierto and Volosin, “Hyper-Presidentialism,” 261.

⁵²¹ Larkins, *The Legacies of Hyper-Presidentialism*, 61, 161.

⁵²² Uki Goñi, “Argentinian President Under Fire For ‘Anti-Democratic’ Decrees,” *Guardian*, January 10, 2016, <https://www.theguardian.com/world/2016/jan/10/argentinian-president-mauricio-macri-anti-democratic-decrees>.

⁵²³ Demian Iglesias Seifert, “Has Right-Wing Populism Reached Argentina?” *Verfassungsblog*, August 18, 2023, <https://verfassungsblog.de/has-right-wing-populism-reached-argentina/>.

⁵²⁴ Roberto Gargarella, “The Fight Against COVID-19 in Argentina: Executive vs Legislative Branch,” *Verfassungsblog*, May 1, 2020, <https://verfassungsblog.de/the-fight-against-covid-19-in-argentina-executive-vs-legislative-branch/>.

Such authority undermines accountability and transparency while fostering an imbalance among the branches of government.

3.3.2 Withdrawal from International Agreements

The President's decision to unilaterally withdraw Turkey from the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the İstanbul Convention, represents one of the most contentious issues of his administration. Turkey's initial commitment to the convention was significant; it signed the convention in 2011 and was the first country to ratify it in 2012⁵²⁵ with a unanimous vote in the parliament⁵²⁶. At that time, the then-Prime Minister Erdoğan took pride in Turkey's leadership role in drafting the İstanbul Convention⁵²⁷.

However, on March 20, 2021, the President's withdrawal from the İstanbul Convention through Presidential Decree No. 3718 triggered widespread debate and controversy⁵²⁸. This action, invoking Article 3 of Presidential Decree No. 9⁵²⁹, granted the president the authority to terminate international agreements. Thousands of women took to the streets in defense of the İstanbul Convention against this decision, sparking a

⁵²⁵ "Charts of Signatures and Ratifications of Treaty 210," Council of Europe Treaty Office, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyid=210>.

⁵²⁶ Ayşegül Kula, "An Unconstitutional Setback," *Verfassungsblog*, March 22, 2021, <https://verfassungsblog.de/erdogan-istanbul-convention/>.

⁵²⁷ Recep Tayyip Erdoğan (@RTErdogan), "Kadına Şiddet Artık "İnsan Hakkı İhlali." Sözleşme, Türkiye'nin öncülüğünde hazırlandı. <http://goo.gl/HCPoc>," *Twitter*, June 3, 2011, <https://twitter.com/RTErdogan/status/76645089455247361>.

⁵²⁸ Kemal Gözler, "Cumhurbaşkanının Uluslararası Sözleşmeleri Feshetme Yetkisi Var mı? İstanbul Sözleşmesinin Feshi Hakkında 3718 Sayılı Cumhurbaşkanlığı Kararı Üzerine Eleştiriler," *Anayasa*, March 20, 2021, www.anayasa.gen.tr/ua-sozlesme-fesih.htm; Levent Köker, "İstanbul Sözleşmesi'nin İptalinin Anayasa'ya Aykırılığı Üzerine," *Birikim Dergisi*, March 24, 2021, <https://birikimdergisi.com/guncel/10531/istanbul-sozlesmesini-sona-erdirme-kararının-anayasaya-aykırılığı-uzerine>; Kula, "An Unconstitutional Setback"; Volkan Aslan, "İstanbul Sözleşmesi'nin Türkiye Cumhuriyeti Bakımından Feshedilmesi Hakkında Kararın 1982 Anayasası Bakımından Değerlendirilmesi," *Lexpera Blog*, March 29, 2021, <https://blog.lexpera.com.tr/istanbul-sozlesmesinin-turkiye-cumhuriyeti-bakimindan-feshedilmesi-hakkinda-kararin-1982-anayasasi-bakimindan-degerlendirilmesi/>.

⁵²⁹ Presidential Decree no. 9, July 15, 2018, art. 3. "The ratification of international treaties, the extension of their period of force by not giving notice of their termination, the making of the necessary notifications for the entry into force of certain provisions of an international treaty binding on the Republic of Turkey, the determination that the field of application of international treaties has changed, the suspension of the application of their provisions, and their termination shall be made by a decree of the President of the Republic.

The Turkish text of the international treaty, which is the subject of ratification, and the text written in the language or languages specified in the treaty to be valid shall be published in the Official Gazette as an annex to the Presidential decree on ratification.

The dates on which an international treaty or certain provisions of an international treaty binding on the Republic of Turkey enter into force with respect to the Republic of Turkey, the dates on which the field of application of an international treaty changes, the dates on which its application is suspended or terminated shall be determined by a decree of the President of the Republic and published in the Official Gazette. An international treaty shall acquire the force of law on the date of entry into force specified in the Presidential decree on the determination of the date of entry into force".

significant reaction from civil society⁵³⁰. The main point of contention revolves around whether the President indeed possesses the right to issue such a decree.

Article 90/1 stipulates that “*The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification*”. Furthermore, Article 90/5 emphasizes that

“International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail”.

Accordingly, ratification of international agreements must first be approved by parliament through a law. Therefore, in order to terminate an international agreement that has been approved by the parliament through a law, ratified by the president on the basis of that law, and entered into force by being published with the signature of the president, the parliament must pass a law declaring it appropriate to terminate the relevant international agreement, and the president must be able to make the decision to terminate it. Therefore, the Convention cannot be terminated by the unilateral declaration of will of the president unless a law has been passed approving its termination.

Before the transition to the presidential system, executive powers regarding international agreements were vested in the Council of Ministers by Law No. 244, titled “Authorizing the Council of Ministers to Conclude, Execute, and Publish International Agreements”. With this law, the Parliament granted powers to the Council of Ministers, including the authority to ratify and terminate international agreements⁵³¹. However, in 2018, under Emergency Decree Law No. 703, both its title and certain provisions have been modified, while some articles have been repealed. Specifically, Article 3, which included the authority to terminate international agreements, was repealed. After thirteen

⁵³⁰ Esra Yalcinalp, “Turkey Erdogan: Women Rise Up Over Withdrawal from Istanbul Convention,” *BBC*, March 26, 2021, <https://www.bbc.com/news/world-europe-56516462#:~:text=When%20President%20Recep%20Tayyip%20Erdogan,Further%20demonstrations%20are%20planned>.

⁵³¹ For example, with the decision of the Council of Ministers No. 2007/12876 published in the Official Gazette dated 7 December 2007, it was decided by the Council of Ministers on 19/11/2007, pursuant to Article 3 of the Law No. 244 dated 31/5/1963, upon the letter of the Ministry of Foreign Affairs dated 1/11/2007 and numbered HUMŞ/1072, to terminate the “Convention on Mutual Information on Acquisition of Citizenship” dated 10 September 1964 numbered 8 of the International Commission on the Status of Individuals with respect to the Republic of Turkey.” Law No. 1043 on the ratification of the said Convention was adopted on April 11, 1968, and published in the Official Gazette on April 22, 1968. As can be seen in this example, the Council of Ministers decided to withdraw from a convention whose ratification was approved by law.

days, the President unilaterally regulated the authorities regarding international agreements with Presidential Decree No. 9. In other words, this time the Parliament did not give this authority to the executive, but the executive regulated this issue on its own.

Critics argue that the decision to withdraw from the İstanbul Convention contravenes principles of administrative law, particularly the principle of parallelism in competence and procedure⁵³². According to the Constitution, the president has the authority to ratify and promulgate international agreements. However, with a few exceptions, this power is conditional on parliamentary approval. On the other hand, the Turkish Constitution does not expressly authorize the president to issue a presidential decree granting them the power to terminate an international agreement. Gözler argues that since the provisions of Presidential Decree No. 9 on the ratification and termination of international agreements are not a matter of executive power, they are *ratione materiae* incompetent provisions in terms of agreements that must be ratified by law⁵³³.

As mentioned above, it is worth remembering that fundamental rights should not be subject to regulation by presidential decrees. The İstanbul Convention primarily concerns fundamental rights outlined in the Constitution, such as the right to life and protection of material and spiritual existence. As such, the authority to issue a decree that terminates the convention raises significant constitutional concerns⁵³⁴.

Proponents of the decision contend that prior to 2018, the Council of Ministers possessed the same authority under the law, which was subsequently delegated to the president. They maintain that the termination of international agreements falls within the purview of executive authority and can be regulated by presidential decrees⁵³⁵. However, even if this argument was to hold merit – though it may not – the Constitution expressly prohibits presidential decrees from regulating fundamental rights. Thus, the termination of the İstanbul Convention, a treaty primarily safeguarding the right to life, raises inherent unconstitutional concerns due to its implications for fundamental rights.

⁵³² Kula, “An Unconstitutional Setback”.

⁵³³ Gözler, “Cumhurbaşkanının Uluslararası Sözleşmeleri Feshetme Yetkisi Var mı?”

⁵³⁴ For the same opinion, see. Kula, “An Unconstitutional Setback”; Köker, “İstanbul Sözleşmesi’nin İptalinin Anayasa’ya Aykırılığı Üzerine”.

⁵³⁵ Mustafa Taha Durmuş, “Cumhurbaşkanının Uluslararası Sözleşmeler Üzerindeki Tasarruf Yetkisi ve Türkiye’nin İstanbul Sözleşmesinden Ayrılmasının Hukuki Analizi,” *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* 29, no. 3 (2021).

Several lawsuits filed with the Council of State aiming to overturn the decision⁵³⁶, but all of these were dismissed⁵³⁷. Upon the Council of State’s decision, the matter was taken to the Constitutional Court⁵³⁸.

This is also a controversial issue in the United States, particularly evident with President Trump’s single-handed withdrawal from the Paris Agreement, reigniting the debate. The Constitution empowers the president to “*make Treaties, provided two thirds of the Senators present concur*”⁵³⁹, but it says nothing about which branch of government may terminate or withdraw from those treaties.

In the academic circles of the United States, there is contention regarding the mirror principle, suggesting that the executive branch can end genuinely sole executive agreements without involving Congress, provided they were lawfully established without congressional input. However, the president cannot entirely sideline Congress from the withdrawal or termination procedures concerning congressional-executive agreements or treaties that were originally formed with significant legislative involvement⁵⁴⁰.

In Argentina, this is expressly provided for in the Constitution. The human rights treaties expressly enumerated in the Constitution may only be denounced by the National Executive Power after prior approval by two-thirds of the total number of members of each Chamber if such a situation should arise⁵⁴¹. The Argentine example highlights the

⁵³⁶ Actions taken by the President of the Republic based on laws and presidential decrees are administrative acts and are subject to the review of the Council of State pursuant to Article 24 of the Council of State Law. The decision to withdraw from the İstanbul Convention is also a presidential decision and is subject to review by the Council of State.

⁵³⁷ “Türkiye’nin İstanbul Sözleşmesi’nden Çekilme Kararı Hukuken Kesinleşti,” *Euronews*, January 2, 2023, <https://tr.euronews.com/2023/01/02/turkiyenin-istanbul-sozlesmesinden-cekilme-karari-hukuken-kesinlesti>.

⁵³⁸ Sefa Uyar, “İstanbul Sözleşmesi AYM’ye Taşındı,” *Cumhuriyet*, May 12, 2023, <https://www.cumhuriyet.com.tr/siyaset/istanbul-sozlesmesi-aymye-tasindi-2080234>.

⁵³⁹ US Constitution art. II sec. 2.

⁵⁴⁰ Harold Hongju Koh, “Presidential Power to Terminate International Agreements,” *The Yale Law Journal Forum* 28 (2018).

⁵⁴¹ Constitution of Argentina art. 75/22. “The Congress shall have power:

22. To approve or reject treaties entered with other nations and with international organizations, and concordats with the Holy See. Treaties and concordats have higher standing than laws.

The following [international instruments], under the conditions under which they are in force, stand on the same level as the Constitution, [but] do not repeal any article in the First Part of this Constitution, and must be understood as complementary of the rights and guarantees recognized therein: The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the [International] Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment; and the Convention on the Rights of the Child. They may only be denounced, if such is to be the case, by the National Executive Power, after prior approval by two thirds of the totality of the members of each Chamber.

importance of a two-thirds vote in both chambers, ensuring opposition inclusion in such decisions.

The decision to withdraw Turkey from the İstanbul Convention highlights the delicate balance of power between the executive and legislative branches. The President's assertion of authority through Presidential Decree No. 9, without the express approval of the parliament, raises questions regarding its alignment with administrative and constitutional principles. The withdrawal from such a significant international agreement also prompts concerns about the potential implications for other key human rights treaties.

3.3.3 Power to Veto

In a system of checks and balances, one of the executive's mechanisms for influencing the legislative process is the veto power. While the executive branch cannot directly interfere in the legislative decision-making process, it holds the authority to either accept or veto laws that emerge from it. This grants the executive branch the capacity to block decisions made by the legislature⁵⁴².

In Turkey, the president has the power to veto laws enacted by the parliament. However, this veto power is not absolute; for a vetoed law to be adopted, it must be reapproved by an absolute majority of the total number of deputies. The Venice Commission acknowledges that this veto power grants the president a significant legislative tool, increasing the executive's influence in the lawmaking process⁵⁴³.

This power granted to the president can be viewed as a significant limitation on the legislative power of the parliament⁵⁴⁴. Under the previous system, for the parliament to re-adopt the law vetoed by the president, the absolute majority of those attending the meeting was sufficient. However, under the presidential system, the veto power transforms from a mere delaying tactic to a significant authority, which challenges the principle of the separation of powers⁵⁴⁵.

The combination of the president's veto power and the alignment of the parliamentary majority with the president's alliance increases the likelihood of enlarging the scope of presidential decrees regarding executive power. On the other hand, the

Other treaties and conventions on human rights, after being approved by Congress, shall require the vote of two-thirds of the totality of the members of each Chamber in order to enjoy standing on the same level as the Constitution."

⁵⁴² Doğan and Geyik, "Cumhurbaşkanlığı Hükümet Sisteminde Kuvvetler Ayrılığı İlkesi," 24.

⁵⁴³ Venice Commission, *Turkey: Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017*, para. 92.

⁵⁴⁴ Ekrem Ali Akartürk, "2017 Anayasa Değişikliğinin Parlamentosuzlaştırma Etkisi Üzerine," *Yeditepe Üniversitesi Hukuk Fakültesi Dergisi* 17, no. 1 (2020): 14.

⁵⁴⁵ Doğan and Geyik, "Cumhurbaşkanlığı Hükümet Sisteminde Kuvvetler Ayrılığı İlkesi," 35.

possibility of the president using their veto power against the laws enacted on the same subject with the presidential decrees reveals a different superiority in terms of constitutional practices. While the parliament requires at least one hundred and fifty-one votes to pass a law⁵⁴⁶, a law returned by the president must be approved by an absolute majority⁵⁴⁷, a requirement introduced with the 2017 Constitutional Amendment⁵⁴⁸, aimed at consolidating the president's power. In addition, presidential decrees are not subject to direct parliamentary oversight, being reviewed only by the Constitutional Court, though the president's influence on the judiciary raises concerns about the balance of power.

One of the most important and pervasive powers inherent in presidential systems is the authority to exercise a veto. All Latin American countries' constitutions that were adopted after 1979 explicitly give presidents the right to veto legislation, as well as the United States⁵⁴⁹. However, the thresholds for overriding a presidential veto vary across countries, ranging from an absolute majority in Turkey, Brazil (both Chambers of Congress)⁵⁵⁰, and Peru⁵⁵¹, to a two-thirds majority in the United States⁵⁵², Argentina⁵⁵³,

⁵⁴⁶ Turkish Constitution art. 96. "The Grand National Assembly of Turkey shall convene with at least one-third of the total number of members for all its affairs, including elections it holds. Unless otherwise stipulated in the Constitution, the Grand National Assembly of Turkey shall take decisions by an absolute majority of those present; however, the majority for decision can, under no circumstances, be less than one plus a quarter of the total number of members."

⁵⁴⁷ Turkish Constitution art. 89/3. "If the Grand National Assembly of Turkey adopts the law sent back for reconsideration with the absolute majority of total number of members without any amendment, the law shall be promulgated by the President of the Republic; if the Assembly makes a new amendment to the law, the President of the Republic may send the amended law back for reconsideration."

⁵⁴⁸ Turkish Constitution art. 89/3 (repealed). "If the Turkish Grand National Assembly accepts the returned law as is, the law is published by the President; If the Parliament makes a new amendment to the returned law, the President may send the amended law back to the Parliament."

⁵⁴⁹ Cheibub, Elkins and Ginsburg, "Still the Land of Presidentialism?"

⁵⁵⁰ Constitution of Brazil art. 66/4. "A veto shall be considered in a joint session within thirty days of receipt thereof and may only be rejected by an absolute majority of the Deputies and Senators."

⁵⁵¹ Constitution of Peru, art. 108/3. "Once the law has been reconsidered by Congress, its President enacts the law with the vote of more than half the legal number of congressmen."

⁵⁵² US Constitution art. I sec. 7. "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

⁵⁵³ Constitution of Argentina art. 83. "A bill wholly or partially rejected by the Executive Power shall be returned with its objections to the originating Chamber; the latter shall debate it anew, and if it ratifies it by a majority of two-thirds of the votes, the bill is sent again to the reviewing Chamber. If both Chambers pass it by a two-thirds majority, the bill becomes law and goes to the Executive Power for its promulgation. The voting in both Chambers shall be in this case by roll call, by yeas or by nays, and both the names and opinions of those voting as well as the objections of the Executive Power shall be immediately published in the press. If the Chambers disagree [with each other] regarding the [Executive's] objections, the bill may not be reintroduced in the sessions of that year."

and Mexico⁵⁵⁴. These quorums are much higher than the simple majority required for the approval of ordinary legislation.

When taken on its own, the veto power primarily enables presidents to maintain the status quo, particularly if it is expected to be overcome by a strong majority. The importance of the veto power significantly increases when combined with the authority to propose legislation and issue decrees with legal force. In such circumstances, presidents have the power to obstruct legislative initiatives that aim to pass laws contrary to their preferences and bypass the legislative process by enacting regulations that support their policy objectives⁵⁵⁵. The ability to issue decrees with legal force, present in 95 percent of Latin American constitutions⁵⁵⁶, highlights the importance of the legislative majority in checking the executive branch. Brazil is a prime example, where the legislature's power to override a presidential veto with an absolute majority is crucial in balancing the president's authority to issue decrees that have legal force.

Despite giving the president a significant amount of veto power, the US Constitution does not grant them the authority to propose legislation or issue decrees with legal force. As a result, the US presidents primarily have the power to maintain the current situation regarding the legislative majority, and they have relatively little power to make significant changes⁵⁵⁷.

3.3.4 Presidential Power to Appoint

The 2017 constitutional amendments have vested the president with the power to establish all executive actions, including the appointment of ministers, vice presidents, and high-ranking officials. In Turkey, the president is not obliged to seek parliamentary approval for appointing ministers or high-ranking executives⁵⁵⁸. This structure reduces the need for compromises with other branches, potentially affecting the balance of power. As a result, the president holds significant influence over the bureaucracy, allowing

⁵⁵⁴ Constitution of Mexico art. 72/C. "Any bill rejected partially or totally by the President of the Republic shall be returned with the respective corrections to the original House. The bill shall be discussed again in such House and, if confirmed by a two-thirds majority of votes, it shall be submitted again to the reviewer House. If a two-thirds majority of votes supports the bill at the second House, it shall be considered as enacted law or decree and shall be sent to the President of the Republic in order to be published.

Voting for enacting laws or decrees shall be nominal."

⁵⁵⁵ Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 119.

⁵⁵⁶ Cheibub, Elkins and Ginsburg, "Still the Land of Presidentialism?"

⁵⁵⁷ Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 120.

⁵⁵⁸ Turkish Constitution art. 104/8, 9, 10." He/she appoints and dismisses Vice-Presidents of the Republic and ministers.

He/she appoints and dismisses high level State officials and regulates the procedures and principles relating to the appointment of these, by presidential decrees.

He/she accredits representatives of the Turkish State to foreign states and receives the representatives of foreign states appointed to the Republic of Turkey."

appointments that align with their preferences. In this case, the president, who is a party member or most likely a party leader, creates a party bureaucracy of people who are loyal to them. This structure raises concerns over the potential overlap between the state apparatus and the political party to which the president belongs.

Moreover, the president holds the authority to dismiss ministers and high-ranking officials at will, enabling them to replace individuals who do not align with their agenda. Although it might appear customary for the president, as the sole owner of the executive branch, to implement their own policies, the following examples reveal a concerning pattern: the president, vested with the authority to appoint and dismiss high-ranking officials in formally independent institutions. This may impact the perceived autonomy of these institutions. Presidential Decree No. 3 outlines the procedures for appointing high-ranking officials to public institutions and organizations. This decree grants the president significant discretion over appointments, including deputy ministers, governors, rectors, ambassadors, and others.

Furthermore, Article 104 of the Constitution empowers the president to regulate appointment rules through presidential decrees as they see fit. Okşar argues that the president, vested with the constitutional authority to modify appointment procedures and principles at will, may contravene the principle of legal certainty, a cornerstone of the rule of law⁵⁵⁹. Okşar mentioned that in Turkey's new system, the principle of legal certainty could be violated due to the concentration of authority in a single individual responsible for setting and implementing rules regarding the appointment of high-ranking officials without any oversight mechanism in place⁵⁶⁰. Indeed, the criteria for appointing the rectors were changed twice within a span of three months⁵⁶¹.

In the history of Turkey, the rules for the appointment of rectors have changed many times. First, the Law on Universities no. 4936, published in the Official Gazette on June 18, 1946, regulated the appointment of rectors by-election. Later, the institution of the Higher Education Council (*Yükseköğretim Kurulu - YÖK*) was established during the military regime, and the Higher Education Law abolished the rule of rectors being elected and switched to the appointment method. On July 7, 1992, an amendment was made to the article of the Higher Education Law regulating the election of the rector, and the

⁵⁵⁹ In 2015, the Constitutional Court issued a judgment that emphasized the importance of the relationship between the rule of law and legal certainty.

⁵⁶⁰ Okşar, *Yürütme Erkinin Üstünlüğü*, 90.

⁵⁶¹ Presidential Decree on Appointment Procedures for Senior Public Administrators and Public Institutions and Organizations no. 3; Presidential Decree on the Organization of Ministerial, Related, Affiliated and Related Institutions and Organizations and Other Institutions and Organizations no. 4; Presidential Decree Amending Certain Presidential Decrees no. 17.

election was brought again in the appointments of the rectors. On October 29, 2016, with the emergency decree, it was again regulated that rectors would take office by appointment. It is crucial to draw attention to the fact that this issue is regulated by the emergency decree. Although the appointment of the rectors is not an issue related to the state of emergency, it was regulated by an emergency decree.

In Turkey, the example of the president's appointment power weakening independent institutions is most clearly seen in the Central Bank, which plays crucial roles in the economy. These roles include financing governments, developing the financial system, implementing monetary policy, and managing currency circulation and stability. Central banks are responsible for setting market interest rates, managing credit provision, and safeguarding the value of national currencies, in addition to overseeing banks and maintaining financial stability. Independence is vital for central banks to effectively execute these responsibilities⁵⁶².

However, the independence of the central bank has come under scrutiny due to the president's discretionary appointments. For instance, Murat Çetinkaya assumed office in 2016⁵⁶³, predating the transition to the presidential system. However, following the transition, in 2019, President Erdoğan dismissed Çetinkaya from his position⁵⁶⁴. President Erdoğan justified the dismissal by stating that the governor had not aligned with the presidency's economic policy directions, citing 'disobedience' as a reason.⁵⁶⁵

After the transition to the presidential system (2018-2024), five governors have been dismissed from their posts. Although central bank governors are appointed by presidential decisions (*cumhurbaşkanlığı kararları*) for four-year terms⁵⁶⁶, the longest-serving governor remained in office for 26 months. This situation raises concerns about the erosion of institutional independence within the central bank and highlights the need to safeguard its autonomy from political influence.

⁵⁶² Özgür Altuntaş, "Merkez Bankası Bağımsızlığı: Avrupa Merkez Bankası ve Türkiye Cumhuriyet Merkez Bankası Karşılaştırması," *Pamukkale Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 12 (2012):73-74.

⁵⁶³ Decision Number: 2016/8768, April 11, 2016, <https://www.resmigazete.gov.tr/eskiler/2016/04/20160417-2.pdf>.

⁵⁶⁴ Decision 2019/159, July 5, 2019, <https://www.resmigazete.gov.tr/eskiler/2019/07/20190706-3.pdf>.

⁵⁶⁵ "Erdoğan: Merkez Bankası Başkanı'ni Görevden Aldık, Çünkü Laf Dinlemiyordu," *Bloomberg HT*, November 5, 2019, <https://www.bloomberght.com/erdogan-merkez-bankasi-baskani-ni-gorevden-aldik-cunku-laf-dinlemiyordu-2237240>.

⁵⁶⁶ Previously, Central Bank governors were appointed for five years by the Council of Ministers.

A similar example to Turkey can be seen in Brazil during Bolsonaro's presidency. Considering the COVID-19 pandemic as "a little flu"⁵⁶⁷, Bolsonaro constantly changed the Ministers of Health who opposed him⁵⁶⁸.

A comparison with the United States highlights differences in presidential appointments. In the US system, the president has the authority to appoint secretaries, yet these appointments must be approved by the Senate⁵⁶⁹. Additionally, the president also holds the authority to dismiss them. The political accountability of secretaries is not directed towards the electorate or Congress but solely towards the president who appointed them⁵⁷⁰. In practice, with exceptions, it is typically observed that the Senate approves the president's appointments⁵⁷¹. Additionally, US presidents are responsible for appointing ambassadors, consuls, and all other officers with the consent of the Senate⁵⁷². With the exception of judges, the president has the authority to terminate all individuals appointed by them; this termination does not require consent from the Senate.

As can be seen, there are numerous systems of checks and balances all around the US system. Even in intra-executive appointments, there is a structure in place that is under the control of the legislative branch. On the other hand, hyper-presidential systems seem to prioritize empowering presidents over relying on checks and balances.

In Latin America, approximately 90 percent of post-independence constitutions have granted the executive branch unrestricted discretion in appointing and dismissing cabinet members⁵⁷³. Presidents can also appoint a significant portion of high-ranking bureaucrats, much like ministers, without Senate approval⁵⁷⁴.

In all Latin American presidential systems, except Nicaragua, presidents have the authority to appoint ministers freely⁵⁷⁵. According to the Nicaraguan constitution, the

⁵⁶⁷ Simone Iglesias, Martha Viotti Beck and Samy Adghimi, "'Little Flu' Can't Hurt Him: Why Bolsonaro Still Shuns Lockdowns," *Bloomberg*, March, 30, 2020, <https://www.bloomberg.com/news/articles/2020-03-30/-little-flu-can-t-hurt-him-why-bolsonaro-still-shuns-lockdowns>.

⁵⁶⁸ Archegas and Kreuz, "The 'Constitutional Military Intervention'".

⁵⁶⁹ Ergun Özbudun, "Hükümet Sistemi Tartışmaları," *Yeni Türkiye* 51 (2013): 206.

⁵⁷⁰ Erdoğan Teziç, "Başkanlık Rejimini Anlamak," *Yeni Türkiye* 51 (2013): 368.

⁵⁷¹ Hasan Tahsin Fendoğlu, "Başkanlık Sisteminin Türkiye'de Uygulanabilirliği," *Yeni Türkiye* 51 (2013): 579; İlder Turan, "Başkanlık Sistemi ve Ülkemizde Başkanlık Sistemi Tartışmaları," *Yeni Türkiye* 51 (2013): 527.

⁵⁷² US Constitution art. II sec. 2. "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

⁵⁷³ José Antonio Cheibub, Zachary Elkins, Tom Ginsburg, "Latin American Presidentialism in Comparative and Historical Perspective," *Texas Law Review* 89 (2011): 1717-1718.

⁵⁷⁴ Özsoy Boyunsuz, *Dünyada Başkanlık Sistemleri*, 147.

⁵⁷⁵ "Cabinet Selection," *Constitute Project*, <https://www.constituteproject.org/constitutions?key=cabsel>.

National Assembly has the function of ratifying, by a vote of an absolute majority of the total number of its members, appointments made by the President of the Republic to the posts of Minister of State and Deputy Minister, Attorney General and Deputy Attorney General, chiefs of diplomatic missions, and heads or directors of autonomous and official bodies, with a delay not exceeding fifteen working days. The appointment is not considered valid until ratified by the National Assembly. If ratification does not take place, the President of the Republic shall make a new appointment within thirty working days; the new appointment shall be subject to the aforementioned ratification procedure⁵⁷⁶.

Although, according to the constitutions of Colombia⁵⁷⁷, Ecuador⁵⁷⁸, Peru⁵⁷⁹ and Venezuela⁵⁸⁰, the president can freely appoint and dismiss ministers, the legislature can dismiss them through a censure. This contrasts with the United States, where, despite the requirement for Senate approval for high-ranking appointments⁵⁸¹, the president

⁵⁷⁶ Constitution of Nicaragua art. 138/30. "The National Assembly has the following functions: 30. To ratify within a delay not exceeding fifteen working days by vote of a simple majority of its total membership the appointment made by the President of the Republic to the offices of Minister and Deputy Minister of the State, Attorney General and Deputy Attorney General, heads of diplomatic missions and presidents or directors of autonomous and governmental entities. The appointment is not considered as valid until the National Assembly has ratified it. If ratification does not take place the President of the Republic shall make a new appointment within thirty working days; the new appointment is subject to the aforementioned ratification procedure."

⁵⁷⁷ Constitution of Colombia art. 135/9. "Each House shall have the following powers: 9. To table a motion of censure with respect to ministers, permanent secretaries and heads of administrative departments for matters related to their official functions, or for ignoring the requests or summons of the Congress of the Republic. Should it come to a motion of censure, it must be tabled by at least one tenth of the members who make up the respective House. The vote shall take place between the third and 10th day following the end of the discussion, with a public hearing of the respective official. Approval of the motion shall require the affirmative vote of one half of the members plus one of the House which has tabled it. Once the motion is approved, the official shall be relieved of his/her functions. If it is voted down, no new motion of censure may be proposed on the same matter unless it is supported by new facts. The resignation of the official against which the censure motion has been tabled does not prevent the latter from being approved in accordance with the provisions of this Article. Once a decision has been taken on the censure motion by one House it bars a decision by the other House on the same matter."

⁵⁷⁸ Constitution of Ecuador art. 131/1. "The National Assembly shall be able to file impeachment proceedings at the request of at least one fourth of its members, and for failure to perform the duties stipulated by the Constitution and the law, against the Ministers of State or the supreme authority of the Office of the State Prosecutor, the Office of the Comptroller General, the Attorney-General's Office, the Office of the Human Rights Ombudsman, the Office of the Attorney for the Defense of the People, the Superintendencies, and the members of the National Electoral Council, the Electoral Dispute Settlement Court, the Judiciary Council and the Council for Public Participation and Social Control, and the other authorities as provided for by the Constitution, during the performance of their duties in office and up to one year after concluding their respective terms of office."

⁵⁷⁹ Constitution of Peru art. 132/1. "Congress makes effective the political liability of the Cabinet or of each minister individually, through a vote of no confidence or by defeating a vote of confidence. The latter may only be proposed by ministerial initiative."

⁵⁸⁰ Constitution of Venezuela art. 246. "The approbation of a vote of censure against a Minister by at least three fifths vote of the members present in the National Assembly, shall result in the Minister's removal from office. The removed official shall be barred from serving as a Minister or Executive Vice-President for the remainder of that presidential term."

⁵⁸¹ US Constitution art. II sec. 2. See fn. 569.

possesses discretionary authority to dismiss officials from their duties within the cabinet and sub-cabinet positions. Besides, according to the constitutions of the Dominican Republic⁵⁸² and El Salvador⁵⁸³, the legislature may recommend to the president the dismissal of ministers following certain procedures.

The 1994 Constitution of Argentina introduced a “chief of cabinet” as a check on the president, but the president still has unrestricted authority to appoint this office⁵⁸⁴. Considering that the legislature might censure the chief of cabinet under Article 101 of the Constitution, one could assume that the president would not choose someone whom the legislative body would oppose. However, it is very difficult to say that the person holding this office would serve as a counterbalance to the president because of the difficulty of starting the censure process and the challenge of predicting a balance in a unified government⁵⁸⁵.

Consequently, this consolidation of power raises concerns about the weakening of key checks and balances within Turkey’s political system. It poses a significant threat to the opposition, as the independence of these institutions increasingly depends on the president’s loyalty.

3.3.5 Presidential Power to Judicial Appointments

Even though it is constitutionally regulated that the judiciary is independent⁵⁸⁶, the president plays a major role in the formation of the judicial branch. Under the new system, the president has broad powers of appointment over the high courts and the Council of Judges and Prosecutors (*Hakimler ve Savcılar Kurulu*, HSK), which has

⁵⁸² Constitution of Dominican Republic art. 95/2. “If the male or female official summoned does not appear without a justifiable reason or his or her declarations are considered unsatisfactory, the chambers, with the vote of two thirds of their present members, may emit a vote of censure against him or her and recommend his or her dismissal from office to the President of the Republic or to the appropriate hierarchical superior for breach of responsibility.”

⁵⁸³ Constitution of El Salvador art. 131/37. “It corresponds to the Legislative Assembly:
37. To recommend to the President of the Republic the dismissal of the Ministers of State; or to the corresponding organs, that functionaries in Official Autonomous Institutions be dismissed, when it believes this to be appropriate, as a result of an investigation of its special committees or of an interpellation, in such case. The resolution of the Assembly shall be binding when it refers to the heads of public security or of the intelligence [department] of the State for a cause involving grave violations of Human Rights;”

⁵⁸⁴ Constitution of Argentina art. 99/7. “The President of the Nation has the following powers:
7. He may appoint and remove ambassadors, Ministers plenipotentiary, and charge d’affaires, with the consent of the Senate; on his own, he may appoint and remove the Chief of the Cabinet of Ministers and the other Ministers of the Cabinet, the officials of his office, consular agents, and employees whose appointment is not otherwise regulated by this Constitution.”

⁵⁸⁵ Rose-Ackerman, Desierto and Volosin, “Hyper-Presidentialism,” 253.

⁵⁸⁶ Turkish Constitution art. 9. “Judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation.” art. 138/1. “Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming with the law.”

significant authority over judges and prosecutors serving in the local courts. The president is vested with direct or indirect authority to appoint the members of the Constitutional Court, the Court of Cassation, and the Council of State.

The HSK, then known as the Supreme Council of Judges, was established in 1961 to decide on all personnel matters of judges⁵⁸⁷. The purpose of the Council is to ensure the independence of the courts and the security of the tenure of judges⁵⁸⁸. According to Article 159,

“The Council shall conduct the proceedings regarding the admission to the profession of judges and public prosecutors of civil and administrative courts, appointment, transferring to other posts, delegation of temporary powers, promotion, and being reserved to the first category, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties, and removal from office; the Council shall take final decisions on proposals of the Ministry of Justice concerning the abolition of a court or changes in the territorial jurisdiction of a court; it shall also exercise the other functions given to it by the Constitution and laws.”

Under the constitutional amendments, four of the thirteen members are appointed by the president, while the remaining seven are appointed by parliament. The president of the council is the minister of justice. The undersecretary of the ministry of justice is an *ex officio* member of the council⁵⁸⁹. As mentioned above, the president appoints and

⁵⁸⁷ Özbudun, *Türk Anayasa Hukuku*, 350.

⁵⁸⁸ Turkish Constitution art. 159/1. “The Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges.”

⁵⁸⁹ Turkish Constitution art. 159/3; “The President of the Council is the Minister of Justice. The Undersecretary to the Ministry of Justice shall be an ex-officio member of the Council. By the President of the Republic, three members of the Council shall be selected among civil judges and public prosecutors, who are first category judges or prosecutors and who have not lost the qualifications required for being a first category judge or prosecutor, and one member among administrative judges and public prosecutors who are first category judges or prosecutors and who have not lost the qualifications required for being a first category judge or prosecutor; by the Grand National Assembly of Turkey, three members shall be selected from among members of the Court of Cassation, one member shall be selected from among members of the Council of State and three members, the qualifications of whom are defined by law, from among academic members in the field of law of high education institution and lawyers. Among the members elected from academic members and lawyers, at least one shall be an academic member and one shall be a lawyer. The applications for the memberships to be elected by the Grand National Assembly of Turkey shall be made to the Office of the Speaker of the Assembly. The Office of the Speaker conveys the applications to the Joint Committee composed of members of the Committee on Justice and the Committee on Constitution. The Joint Committee shall elect three candidates for each vacancy with a two-thirds majority of total number of members. If the procedure of electing candidates cannot be concluded in the first round, a three-fifth majority of total number of members shall be required in the second round. If the candidates cannot be elected in this round as well, the procedure of electing candidates shall be completed by choosing a candidate by lot, for each membership among the two candidates who have received the highest number of votes. The Grand National Assembly of Turkey shall hold a secret ballot election for each candidate the Committee has identified. In the first round a two-thirds majority of total number of members shall be required; in case the election cannot be concluded in this round, in the second round a three-fifth majority of total number of members shall be required. Where the member cannot be elected in the second round as well, the election shall be completed by choosing a candidate by lot among the two

dismisses the minister of justice and the undersecretary. Hence, the minister and their undersecretary are subordinate to the president, who is their hierarchical superior⁵⁹⁰. The fact that the president of the HSK, which is supposed to ensure judicial independence, is the minister of justice and the undersecretary is a member of the council, is contrary to the *raison d'être* of the council.

Thus, the president alone appoints six members, while parliament elects the remaining seven by qualified majority. A two-third majority is required to elect the members; in the event of failure to reach this majority, a three-fifths majority is required in the second ballot. In case the member cannot also be elected with a three-fifth majority, the election is concluded by a lot between the two candidates who received the highest number of votes⁵⁹¹. Özbudun notes that if the president holds a friendly majority in the parliament, it follows that all or the majority of the members of the HSK will be aligned with the executive. Given the great influence of the HSK over all members of the judiciary, this means that the entire judicial branch is dependent on the executive⁵⁹². Indeed, the Venice Commission, in its opinion on the 2017 constitutional amendments, addresses the same issues. According to the Commission's opinion,

*“In a presidential regime, a strong, independent judiciary is essential to settle the conflicts between the executive and the legislative powers. However, the proposed amendments weaken, instead of strengthen the Turkish judiciary. The Council of Judges and Prosecutors, whose current composition largely meets international standards, would be immediately reformed by providing that six of the thirteen members are appointed by the President, who would no more be a *pouvoir neutre*, while seven members would be chosen by the Grand National Assembly, over which the President would have influence and which, due to the synchronization of elections, would very probably represent the same political forces as the President. No member of the Council would be elected by peer judges anymore. On account of the Council's important functions of overseeing appointment, promotion, transfer, disciplining and dismissal of judges and public prosecutors, the President's control over the Council would extend to all the judiciary. Control over the Council of Judges and Prosecutors would also indirectly enhance the President's control over the Constitutional Court.”*

Okşar also argues that the possibility of re-election of council members whose terms have expired will further facilitate the control of these members. On the other hand, Okşar presents that by placing all decisions of the HSK under the armor of legislative restraint and keeping them closed to judicial review, the president's potential influence

candidates who have received the highest number of votes.” This provision was the same before the amendments.

⁵⁹⁰ Doğan and Geyik, “Cumhurbaşkanlığı Hükümet Sisteminde Kuvvetler Ayrılığı İlkesi,” 39.

⁵⁹¹ Turkish Constitution art. 159/3.

⁵⁹² Özbudun, *Türk Anayasa Hukuku*, 358.

and control over the entire judiciary through the HSK are further reinforced⁵⁹³. According to Article 159 of the Constitution, the decisions of the HSK, other than those related to dismissal from the profession, cannot be appealed to the judicial authorities⁵⁹⁴. The Council of State is the first instance court for annulment cases against dismissals of judges and prosecutors⁵⁹⁵. As will be discussed below in relation to the Council of State, the method of selection of the members of the Council of State and the HSK gives the president the upper hand and a certain amount of power.

With the 2017 constitutional amendment, the number of members of the Constitutional Court was reduced from seventeen to fifteen. Prior to the 2017 constitutional amendment, three members of the Constitutional Court were elected by the parliament and fourteen by the president. After the 2017 constitutional amendment, pursuant to Article 146⁵⁹⁶ of the Constitution, the president appoints twelve of the fifteen members of the Constitutional Court, while the parliament elects the remaining three. The fact that parliament elects only three members of the Constitutional Court is already a clear indication of the proportional imbalance of power between the legislature and the executive. Considering that the majority of the legislature is in the same political party or alliance with the president, the opposition has no say in the composition of the Constitutional Court, the most important higher judicial body of the country. Thus, the president is likely to influence the direction and nature of the decisions to be taken⁵⁹⁷.

⁵⁹³ Okşar, *Yürütme Erkinin Üstünlüğü*, 169.

⁵⁹⁴ Turkish Constitution art. 159/10. "The decisions of the Council, other than dismissal from the profession, shall not be subject to judicial review."

⁵⁹⁵ Law on the Council of Judges and Prosecutors no. 6087, December 18, 2010, art. 33/5. "An appeal may be made to the judicial authorities against the final decisions of the General Assembly or chambers regarding the penalty of dismissal from profession; Other decisions are beyond judicial review. Annulment cases filed against dismissal decisions are heard in the Council of State as the first instance court. These cases are considered urgent matters."

⁵⁹⁶ Turkish Constitution art. 146/2-3. "The Grand National Assembly of Turkey shall elect, by secret ballot, two members from among three candidates to be nominated by and from among the president and members of the Court of Accounts, for each vacant position, and one member from among three candidates nominated by the heads of the bar associations from among self-employed lawyers. In this election to be held in the Grand National Assembly of Turkey, for each vacant position, two thirds majority of the total number of members shall be required for the first ballot, and absolute majority of total number of members shall be required for the second ballot. If an absolute majority cannot be obtained in the second ballot, a third ballot shall be held between the two candidates who have received the greatest number of votes in the second ballot; the member who receives the greatest number of votes in the third ballot shall be elected. The President of the Republic shall appoint three members from the Court of Cassation, two members from Council of State from among three candidates to be nominated, for each vacant position, by their respective general assemblies, from among their presidents and members; three members, at least two of whom being law graduates, from among three candidates to be nominated for each vacant position by the Council of Higher Education from among members of the teaching staff who are not members of the Council, in the fields of law, economics and political sciences; four members from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteurs of the Constitutional Court."

⁵⁹⁷ For the same opinion see, Okşar, *Yürütme Erkinin Üstünlüğü*, 166.

This dynamic becomes especially significant in light of the Constitutional Court's role as the "Supreme Criminal Tribunal", which hold the authority to try the president.

The president also has effective authority to appoint members of the Court of Cassation and Council of State. The powers of the president regarding the Court of Cassation are regulated in Article 154/4 of the Constitution. This article stipulates that *"The Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the Court of Cassation shall be appointed by the President of the Republic for a term of four years from among five candidates nominated for each office by the General Assembly of the Court of Cassation from among its own members by secret ballot..."* The authority to appoint the chief public prosecutor and the deputy chief public prosecutor of the Court of Cassation, who have duties and powers in important matters such as filing a lawsuit to close political parties, constitutes one of the important powers of the president in the field of the judicial branch. In addition, all members of the Court of Cassation are elected by the HSK, which, as explained above, is heavily influenced by the president.

The powers of the president to appoint members to the Council of State are regulated in Article 155/3 of the Constitution. Accordingly, *"Three-fourths of the members of the Council of State shall be appointed by the Council of Judges and Prosecutors from among the first category administrative judges and public prosecutors, or those considered to be of this profession; and the remaining quarter by the President of the Republic from among officials meeting the requirements designated by law"*.

However, in the USA, the president nominates and, with the advice and consent of the Senate, appoints Supreme Court justices⁵⁹⁸. Different systems are envisaged in Latin American presidential systems. However, as far as it is understood from the constitutional provisions, no Latin American presidential system has allowed the executive to have such an influence over the judiciary as in Turkey. For instance, until the 1994 constitutional amendment, the Argentine judiciary was under the influence of the executive branch, but with the 1994 and 2003 amendments, it gained more independence. According to the Constitution of Argentina, Supreme Court judges appointed by the president must be confirmed by two-thirds of the Senate⁵⁹⁹. Similarly,

⁵⁹⁸ US Constitution art. II sec. 2. See fn. 569.

⁵⁹⁹ Constitution of Argentina art. 99/4. "The President of the Nation has the following powers:

4. He appoints the judges of the Supreme Court, with the consent of the Senate by two-thirds of its members present, in a public session convened for that purpose.

He appoints the judges of lower Federal tribunals, taking into account the qualifications of the candidates, based on a binding list of three candidates nominated by the Judicial Council, with the [subsequent] consent of the Senate, [convened] in public session.

A new appointment, preceded by the same consent, shall be necessary in order to maintain in office any of these magistrates once they attain the age of seventy-five. All appointments of magistrates whose age is

in Brazil⁶⁰⁰ and Panama⁶⁰¹, Supreme Court judges are appointed by the president only with the approval of the Senate. Interestingly, in Bolivia, members of the tribunal are chosen by a national nonpartisan election⁶⁰². Indeed, Bolivia's popular election of court members did not prevent it from issuing a highly controversial ruling in favor of former President Evo Morales⁶⁰³. In Chile, as in Turkey, the election of members of the Constitutional Court is divided among several bodies. Three members are elected by the president, three by the Supreme Court, two by the Senate, and two by the House of Representatives. In this system, where the president is elected only once and cannot guarantee a parliamentary majority, it seems unlikely that the president can control the judiciary⁶⁰⁴. In Mexico, members of the Supreme Court are elected by the Senate from among candidates nominated by the president⁶⁰⁵. In a similar vein, in Paraguay, where

that indicated or greater shall be made for five years and may be repeated indefinitely following the same procedure.”

⁶⁰⁰ Constitution of Brazil art. 101/ Sole Paragraph. “Ministers of the Supreme Federal Tribunal shall be appointed by the President of the Republic, with approval of an absolute majority of the Federal Senate.”

⁶⁰¹ Constitution of Panama art. 203/1. “The Supreme Court of Justice shall be composed of the number of Justices determined by law, to be appointed by decision of the Cabinet Council, subject to the approval of the Legislative Branch, for a ten year term. If the post of a Justice becomes permanently vacant during the course of a term, a new Justice shall be appointed to serve the remainder of said term.”

⁶⁰² Constitution of Bolivia art. 182/1. “The Magistrates of the Supreme Court of Justice shall be elected by universal suffrage.”

⁶⁰³ Laurence Blair, “Evo For Ever? Bolivia Scraps Term Limits As Critics Blast ‘Coup’ to Keep Morales in Power,” *Guardian*, December 3, 2017, <https://www.theguardian.com/world/2017/dec/03/evo-morales-bolivia-president-election-limits>; “Bolivian Court Clears Way for Morales to Run For Fourth Term,” *Reuters*, November 29, 2017, <https://www.reuters.com/article/us-bolivia-politics/bolivian-court-clears-the-way-for-morales-to-run-for-fourth-term-idUSKBN1DS2ZX/>.

⁶⁰⁴ Constitution of Chile art. 92/1. “There will be a Constitutional Court composed by ten members, appointed as follows:

Three appointed by the President of the Republic.

Four elected by the National Congress. Two shall be appointed directly by the Senate and two shall be previously proposed by the House of Representatives for approval or rejection by the Senate. The designations, or the proposals, in their case, shall be made in single votes and will require for their approval of the favorable vote of two-thirds of the senators or active Representative, as appropriate.

Three elected by the Supreme Court in a secret ballot that shall be celebrated in a session specially convened for that purpose”; Guatemala is a similar case, where different offices elect one member of the court each, Constitution of Guatemala art. 269/2. “The magistrates will remain in their functions for five years and [they] will be appointed in the following manner:

One magistrate by the plenary of the Supreme Court of Justice;

One magistrate by the plenary of the Congress of the Republic;

One magistrate by the President of the Republic in the Council of Ministers;

One magistrate by the Superior University Council of the University of San Carlos de Guatemala; and

One magistrate by the Assembly of the College of Attorneys.”

⁶⁰⁵ Constitution of Mexico art. 96/1. “For appointment of a Justice of the Supreme Court, the President of the Republic shall submit a list of three candidates to the Senate, who should present before the Senate. Within a 30-day period, the Senate shall choose one of the candidates by the vote of two thirds of the present members of the Senate. This period may not be extended. Should the Senate not decide within such term, then the President of the Republic shall appoint one person from the list he has proposed.”; In Colombia, the Senate elects the judges of the Constitutional Court from lists presented to it by the President of the Republic, the Supreme Court of Justice, and the Council of State, Constitution of Colombia art. 239/2. “The judges of the Constitutional Court shall be elected by the Senate of the Republic for single terms of eight years from lists presented to it by the President of the Republic, the Supreme Court of Justice, and the Council of State.” Also see Constitution of Nicaragua art. 138/7. “The National Assembly has the following functions:

the president's party usually has a majority both in the Chamber of Deputies and the Senate, the members of the Supreme Court are designated by the Chamber of Senators with the agreement of the executive power⁶⁰⁶. In Costa Rica⁶⁰⁷, El Salvador⁶⁰⁸, Honduras⁶⁰⁹, Peru⁶¹⁰ and Uruguay⁶¹¹, all the judges of the Supreme Court are appointed by the legislative assembly. In some countries, judges are selected by commissions established by various bodies⁶¹².

7. To elect the Judges of the Supreme Court of Justice from separate lists proposed for every position by the President of the Republic and by the Deputies of the National Assembly, in consultation with the relevant civilian associations. The deadline for presenting the lists shall be fifteen days counting from the summoning of the National Assembly for their election. In the absence of lists presented by the President of the Republic, the proposals by Deputies of the National Assembly shall be sufficient. Each Judge shall be elected with the approval of at least sixty percent of the Deputies of the National Assembly."

⁶⁰⁶ Constitution of Paraguay art. 264/1. "[The following] are duties and attributions of the Council of the Magistrature:

1. to propose the terna [list of three] of candidates to integrate the Supreme Court of Justice, [the] selection subject to [and] based on suitability, with consideration of merits and aptitudes, and send [elevarlas] them to the Chamber of Senators for it to designate them, with the agreement of the Executive Power;"

⁶⁰⁷ "Description of the Judicial System of Costa Rica," *FIU Center for the Administration of Justice*, <https://caj.fiu.edu/national-cj-systems/central-america/costa-rica/>.

⁶⁰⁸ Constitution of El Salvador art. 131/19. "It corresponds to the Legislative Assembly:

19. To elect in a public and registered vote the following functionaries: the President and Magistrates of the Supreme Court of Justice, the President and Magistrates of the Supreme Electoral Tribunal, the President and Magistrates of the Court of Accounts (Corte de Cuentas) of the Republic, the Attorney General (Fiscal General) of the Republic, the Procurator General (Procurador General) of the Republic, the Procurator for the Defense of Human Rights, and Members of the National Council of the Judiciary;"

⁶⁰⁹ In Honduras, judges are elected by the National Congress from a list of candidates proposed by a 7-member Nominating Committee composed of different sectors, Constitution of Honduras art. 311/1. "The Justices of the Supreme Court of Justice shall be elected by the National Congress, with the favorable vote of two thirds of its total membership, from a nominee pool of candidates of no less than three for each one of the justices to be elected."

⁶¹⁰ Constitution of Peru art. 201/3. "Members of the Constitutional Court are elected by Congress with the positive vote of two-thirds of the legal number of its members. Judges and prosecutors who have not resigned their offices a year in advance are not eligible to be Constitutional Court magistrates."

⁶¹¹ Constitution of Uruguay art. 236/1. "The members of the Supreme Court of Justice shall be appointed by the General Assembly by a two-thirds vote of its full membership. The appointment must be made within ninety days after a vacancy has occurred, for which purpose the General Assembly shall be called into special session. If this period expires without an appointment having been made, the appointment as member of the Supreme Court of Justice shall go automatically to the member of the Appellate Tribunals having the longest service in such post, and, if there is equal seniority, to the person who has served longest in the Judiciary or in the Public or Fiscal Ministry or prosecution service."; In Venezuela, the final selection is carried out by the National Assembly, Constitution of Venezuela art. 264/1. "The justices of the Supreme Tribunal of Justice shall be elected for a single term of 12 years. The election procedure shall be determined by law. In all cases, candidates may be proposed to the Judicial Nominations Committee either on their own initiative or by organizations involved in the field of law. After hearing the opinion of the community, the Committee shall carry out a pre selection to be submitted to the Citizen Power, which shall carry out a second pre selection to be submitted to the National Assembly, which shall carry out the final selection."

⁶¹² Constitution of Dominican Republic art. 179. "The National Council of the Magistrature shall have the following functions:

To appoint the judges of the Supreme Court of Justice

To appoint the judges of the Constitutional Court

To appoint the judges of the Superior Electoral Court and their substitutes

To evaluate the work of the judges of the Supreme Court of Justice"; Constitution of Ecuador art. 434/1. "The members of the Constitutional Court shall be designated by a qualification commission comprised of two persons appointed by each one of the following branches of government: the legislative, the executive, and transparency and social monitoring. Members shall be elected from among the candidates submitted by the above-mentioned branches of government, through a public examination process, with citizen

In conclusion, the president has considerable authority vis-à-vis the legislature and especially the opposition. Currently, through his appointments and the mechanisms created by constitutional amendments, the judiciary has become closely aligned with the President. In this situation, the existence of fully independent courts, especially in cases involving political rights, is called into question. The problem of the independence of the HSK existed even before the presidential system. The fact that the minister and undersecretary are natural members of the council has always kept the independence of the judiciary on the agenda in Turkey. Tanör, in his 1997 report *Türkiye’de Demokratikleşme Perspektifleri* (Democratization Perspectives in Turkey), prepared for TÜSİAD (Turkish Industrialists’ and Businessmen’s Association of Turkey), mentioned that the executive branch had further directed its initiative and influence within the council⁶¹³. However, the current system’s degree of presidential control over the judiciary is unprecedented.

3.3.6 Dismissal of the Legislature

In the preceding section discussing concurrent elections, the renewal of elections was briefly mentioned. In fact, the provision outlined in the article concerning the renewal of elections grants authorization to both the president and the parliament to initiate such an action. However, it is relevant to analyze this issue within the context of presidential powers, specifically under heading of “dismissal of the legislature”.

A closer examination of Article 77 in conjunction with Article 116 reveals how the president can effectively influence the parliamentary majority. According to Article 116/1-2,

“The Grand National Assembly may decide to renew elections with a three-fifths majority of the total number of its members. In this case, the general election of the Grand National Assembly and presidential elections shall be held together.

In the event that the President of the Republic decides to renew the elections, general election of the Grand National Assembly and presidential elections shall be held together.”

Article 116 outlines a mechanism similar to the parliamentary system⁶¹⁴, allowing both the president and parliament to dissolve each other. The president alone may dissolve the parliament, while parliament may dissolve the president’s office with a three-fifths

oversight and option for challenging the process. In the membership of the Court, efforts shall be made to ensure parity between men and women.”

⁶¹³ Tanör, *Türkiye’de Demokratikleşme Perspektifleri*, TÜSİAD (February 1997).

⁶¹⁴ Gözler, *Türk Anayasa Hukuku Dersleri*, 308-309; Gözler, *Elveda Anayasa*, 17.

majority. This provision was ostensibly established to prevent political deadlock between the two branches. However, research suggests that in practice, the executive's decision to dissolve parliament is often driven not solely by a need to resolve significant political crises but can also be viewed as a strategic tool used by leaders in power to strengthen their position when certain constitutional powers are available⁶¹⁵.

However, the concept of mutual dissolution conflicts with the basic principles of the presidential system and the principle of separation of powers⁶¹⁶. Advocates suggest alternative constitutional mechanisms to resolve political crises without resorting to the renewal of elections⁶¹⁷, thus avoiding mutual dissolution.

Some argue that the principle of equality of arms has been adopted on the mechanism of renewal of elections, where both the parliament and the president have the authority to dissolve each other⁶¹⁸. However, while both the president and the parliament have the authority to call for new elections, the decision by the president alone lacks equal weight compared to the parliament's decision requiring a three-fifths majority. The stringent requirements for its activation by the parliament and the asymmetry in the President's individual action challenge the principle.

Furthermore, renewing elections proves to be as challenging as amending the constitution⁶¹⁹, highlighting its formidableness. Under Article 116, a president failing to secure a parliamentary majority risks renewing elections independently. Historical precedents, such as the decision to renew elections following the June 2015 elections, illustrate how this provision might be used in practice. In such instances, the renewal of elections could be perceived as a response to unfavorable parliamentary outcomes rather than a necessary measure to resolve political deadlock.

Despite its inconsistency with the presidential system, similar rules exist in the constitutions of Latin American countries such as Ecuador⁶²⁰, Peru⁶²¹, and Venezuela⁶²².

⁶¹⁵ Kaare Strøm and Stephen M. Swindle, "Strategic Parliamentary Dissolution," *The American Political Science Review* 96, no. 3 (2002): 588.

⁶¹⁶ Gözler, *Elveda Anayasa*, 17-18.

⁶¹⁷ Ali Aslan, "Analiz: Türkiye için Başkanlık Sistemi: Demokratikleşme, İstikrarlaşma, Kurumsallaşma," *SETA* 122 (2015): 35.

⁶¹⁸ Faruk Bilir, "Türkiye'ye Özgü Yeni bir Hükümet Modeli: Cumhurbaşkanlığı Sistemi," *Yeni Türkiye* 94 (2017): 528.

⁶¹⁹ Turkish Constitution art. 175/1. See fn. 185.

⁶²⁰ Constitution of Ecuador art. 148/1. "The President of the Republic will be able to dissolve the National Assembly when, in his/her opinion, it has taken up duties that do not pertain to it under the Constitution, upon prior favorable ruling by the Constitutional Court; or if it repeatedly without justification obstructs implementation of the National Development Plan or because a severe political crisis and domestic unrest."

⁶²¹ Constitution of Peru art. 134/1. "The President of the Republic has the power to dissolve Congress if it has censured or denied its confidence to two Cabinets."

⁶²² Constitution of Venezuela art. 236/1. "The following are attributions and duties of the President of the Republic:

21. To dissolve the National Assembly in the case contemplated by this Constitution."

For instance, in Ecuador, the president Guillermo Lasso declared *muerte cruzada* (mutual death) in response to the initiation of an impeachment procedure against him, dissolving both his own office and the congress in 2023⁶²³. Conversely, Brazil's Impeachable Offenses Act deems attempting to dissolve the national congress an impeachable offense⁶²⁴.

In conclusion, the examination of Turkey's constitutional amendments, particularly Articles 77 and 116, suggests an intent to provide the president with tools to maintain a favorable parliamentary majority. While such provisions may be justified as preventing political impasse, their potential to weaken opposition influence in the parliament raises important questions about their alignment with democratic principles.

3.4 Judicial Harassment Practices on Parliamentary Opposition

3.4.1 Lifting Parliamentary Immunity

In Turkey, the lifting of parliamentary immunity has been used in ways that disproportionately affect opposition deputies. As of December 2023, the number of proceedings requesting the lifting of immunities referred to the Constitution and Justice Joint Committee by the Presidency of the Parliament reached 733. Notably, 512 of these proceedings target DEM Party (former HDP) deputies, primarily on charges related to membership in a terrorist organization and making propaganda for such organizations⁶²⁵.

This practice of lifting the parliamentary immunity predates the constitutional amendments of 2017. In 2016, an unprecedented constitutional amendment stripped the collective immunity of 154 deputies. The amendment, added as provisional article 20⁶²⁶

⁶²³ Prieto, "Ecuador's Mutual Death Clause".

⁶²⁴ Brazil's Impeachable Offenses Act, art. 6/1. "The following are crimes of responsibility against the free exercise of legislative and judicial powers and the constitutional powers of States:
1 - attempt to dissolve the National Congress, prevent the meeting or attempt to impede in any way the functioning of any of its Chambers;"

⁶²⁵ Kemal Karadağ, "Meclis'te 733 Dokunulmazlık Fezlekesi Bulunuyor," *AA*, December 9, 2023, <https://www.aa.com.tr/tr/politika/mecliste-733-dokunulmazlik-fezlekesi-bulunuyor/3077832#>.

⁶²⁶ Turkish Constitution provisional art. 20. "On the date when this Article is adopted by the Grand National Assembly of Turkey, the provision of the first sentence of the second paragraph of Article 83 of the Constitution shall not be applied to members who are the subject of requests for the lifting of immunity which have been submitted by the authorities with the power to investigate or grant leave for an investigation or prosecution, the public prosecutor's office or the courts to the Ministry of Justice, to the Prime Minister's Office, to the Office of the President of the Grand National Assembly of Turkey and to the chair of the Joint Committee comprising the members of the Constitutional Committee and the Justice Committee.

Within fifteen days of the entry into force of this Article, any files with the chair of the Joint Committee comprising the members of the Constitutional Committee and the Justice Committee, the Office of the President of the Grand National Assembly of Turkey, the Prime Minister's Office and the Ministry of Justice concerning the lifting of parliamentary immunity shall be returned to the competent authority so that it can take the necessary action."

to the Constitution through Law No. 6718 on May 20, 2016, effectively bypassed traditional safeguards.

According to this amendment, the provision of the first sentence of the second paragraph of Article 83 of the Constitution ceased to apply to deputies subject to requests for immunity lifting, submitted by investigative authorities or prosecutors. Within fifteen days of the amendment's enactment, all relevant files regarding immunity lifting were to be returned to the competent authority for further action.

The constitutional amendment, which affected a total of 154 members of parliament, including fifty-nine from the CHP, fifty-five from the HDP, twenty-nine from the AKP, and ten from the MHP, as well as one independent deputy⁶²⁷, stands in clear contradiction to the essence of parliamentary immunity as an institution. It suspends parliamentary immunity *en masse* and retrospectively for numerous deputies, therefore nullifying not only the protection system outlined in Article 83⁶²⁸ of the Constitution but also the judicial review system outlined in Article 85⁶²⁹ for deputies falling under its scope. By including provisional article 20 in the Constitution, the mechanism for lifting parliamentary immunity, as envisaged in both the Constitution and the Rules of Procedure of the Parliament, diverged. Despite the constitutional recognition of the principle of individual criminal responsibility in Article 38⁶³⁰ and the second paragraph of Article 83, the process of lifting immunity has been executed collectively, a precedent unseen in Turkey. Consequently, deputies stripped of their immunity were deprived of the right to

⁶²⁷ ECtHR, *Selahattin Demirtaş v. Turkey* (No. 2), Appl. No. 14305/17, December 22, 2020, (Grand Chamber) para. 57.

⁶²⁸ Turkish Constitution art. 83. "Members of the Grand National Assembly of Turkey shall not be liable for their votes and statements during parliamentary proceedings, for the views they express before the Assembly, or, unless the Assembly decides otherwise, on the proposal of the Bureau for that sitting, for repeating or revealing these outside the Assembly.

A deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in *flagrante delicto* requiring heavy penalty and in cases subject to Article 14 of the Constitution as long as an investigation has been initiated before the election. However, in such situations the competent authority has to notify the Grand National Assembly of Turkey of the case immediately and directly.

The execution of a criminal sentence imposed on a member of the Grand National Assembly of Turkey either before or after his election shall be suspended until he ceases to be a member; the statute of limitations does not apply during the term of membership.

Investigation and prosecution of a re-elected deputy shall be subject to the Assembly's lifting the immunity anew.

Political party groups in the Grand National Assembly of Turkey shall not hold debates or take decisions regarding parliamentary immunity."

⁶²⁹ Turkish Constitution art. 85. "If the parliamentary immunity of a deputy has been lifted or if the loss of membership has been decided according to the first, third or fourth paragraphs of Article 84, the deputy in question or another deputy may, within seven days from the date of the decision of the Plenary, appeal to the Constitutional Court, for the decision to be annulled on the grounds that it is contrary to the Constitution, law or the Rules of Procedure. The Constitutional Court shall make the final decision on the appeal within fifteen days."

⁶³⁰ Turkish Constitution art. 38/7. "Criminal responsibility shall be personal."

defend themselves in the “Preparatory Committee, Joint Committee, and General Assembly”, as stipulated in Article 134 of the Rules of Procedure⁶³¹. They were further precluded from seeking recourse to the Constitutional Court for the annulment of the decision to lift their parliamentary immunity pursuant to Article 85 of the Constitution, on grounds of inconsistency with the Constitution and the Rules of Procedure. Thus, the rights of defense and appeal to the Constitutional Court, which are granted to deputies in the context of parliamentary immunity, are abolished. Moreover, to safeguard against politically motivated decisions regarding parliamentary immunity, the Constitution mandates that “*political party groups in the Grand National Assembly of Turkey shall not hold debates or take decisions regarding parliamentary immunity*”. However, the context surrounding this constitutional amendment has led that it was influenced by political considerations. Finally, the amendment can also be criticized for creating inequality between the affected deputies and those who subsequently commit similar crimes⁶³².

In response, the request for annulment was rejected⁶³³ by the Constitutional Court, primarily on the grounds that constitutional amendments are subject to examination solely in terms of their form, as outlined in Article 148⁶³⁴. While the Court’s decision strictly followed this procedural requirement, it missed an opportunity to engage with the underlying purpose of the amendment. Specifically, the Court could have considered the amendment’s political motivations, which seem detached from genuine public interest concerns⁶³⁵.

Meanwhile, the situation highlights broader challenges to democratic norms in Turkey. Selahattin Demirtaş, the then-co-leader of the second-largest opposition party at the time (HDP), has been in prison since 2016 as a consequence of this amendment. Despite the ECtHR’s first violation ruling in 2018⁶³⁶, and then again in 2020⁶³⁷, ordering the release of Demirtaş, Turkey has refused to comply with the ruling. Demirtaş, who is on trial in more than 20 different cases, was released from the main case but was re-arrested 18 days later for the same offense.

⁶³¹ Rules of Procedure of the Grand National Assembly of Turkey, art. 134/1. “The member of parliament, vice president or minister whose immunity is requested to be revoked may defend himself or have a member defend themselves in the preparatory commission, Joint Commission and General Assembly, if they wish.”

⁶³² Ergun Özbudun, “Yasama Sorumsuzluğu ve Yasama Dokunulmazlığı: Hukuki Mahiyetleri ve Farkları,” *TBB Dergisi* 59 (2005).

⁶³³ Turkish Constitutional Court, E. 2016/54 K. 2016/117, June 3, 2016, para. 12-15.

⁶³⁴ Turkish Constitution art. 148/1. See fn. 467.

⁶³⁵ Özbudun, “Yasama Sorumsuzluğu ve Yasama Dokunulmazlığı”.

⁶³⁶ ECtHR, Selahattin Demirtaş v. Turkey (No. 2), Appl. No. 14305/17, November 20, 2018, (Second Section).

⁶³⁷ ECtHR, Selahattin Demirtaş v. Turkey (No. 2), Appl. No. 14305/17, November 20, 2018, (Grand Chamber).

The Venice Commission issued an opinion regarding the given constitutional amendment, characterizing it as an *ad hoc*, ‘one shot’ *ad homines* measure directed against 154 individual deputies with pending cases before the plenary. While the parliament maintained the regime of immunity established in Articles 83 and 85 of the Constitution for the future, it made exceptions for specific cases concerning identifiable individuals, albeit through general language. The Commission highlights the potential for statements by deputies that could be interpreted as supporting terrorism to be subject to criminal prosecution. However, it underscores that such statements often possess a political dimension. Consequently, the Commission emphasized the significance of determining whether such statements should fall under parliamentary immunity⁶³⁸.

In light of the debate, Gözler claims that the provisional article introduced with the constitutional amendment constitutes a fraudulent act against the constitution. This form of fraud involves amending the constitution through a procedure that appears to align with constitutional norms but ultimately contravenes the constitution’s “essence”. As seen above, the amendment was enacted through constitutional channels and not via a coup d’état. However, he claims that it is in contradiction with several foundational principles. These include the principle of rule of law, which is integral to the constitution’s essence, as well as principles governing individuality of criminal responsibility, the right to defense, non-retroactivity of laws, the presumption of innocence, and the principle of separation of powers⁶³⁹.

The 2016 constitutional amendment marked a significant shift in Turkey’s constitutional history, particularly in the context of parliamentary immunity. Despite Turkey’s transition to a presidential system, parliamentary immunity remains unchanged. Nevertheless, the lifting of immunity among opposition deputies represents a concerning trend, perpetuating the stifling parliamentary opposition.

In 2021, the Council of Europe highlighted the frequent concern surrounding the lifting of parliamentary immunity, especially among opposition deputies. It was reported that opposition members, particularly those from the HDP, expressed significant concern regarding these legal proceedings. Alarming, HDP representatives faced a

⁶³⁸ European Commission for Democracy through Law (Venice Commission), *Turkey: Opinion on the Suspension of the Second Paragraph of Article 83 of the Constitution (Parliamentary Inviolability)* 858/2016 (Venice: October 14, 2016).

⁶³⁹ Kemal Gözler, “1982 Anayasası Hala Yürürlükte Mi?: Anayasasızlaştırma Üzerine Bir Deneme (Versiyon 4),” *Anayasa*, May 30, 2016, <https://www.anayasa.gen.tr/anayasasizlastirma-v4.pdf>.

disproportionate number of cases, primarily on terrorism-related charges, constituting 75 percent of the total proceedings⁶⁴⁰.

Following the lifting of Ömer Gergerlioğlu's parliamentary immunity as a member of the HDP and his subsequent conviction for disseminating terrorist propaganda by sharing news from a media outlet on social media, he faced legal consequences⁶⁴¹. However, in response to the Constitutional Court's ruling that his right to be elected and engage in political activity, as well as his freedom of expression, had been violated, Gergerlioğlu returned to parliament⁶⁴². Despite this legal confirmation, the removal of Can Atalay from parliament on January 30, 2024⁶⁴³, despite the Constitutional Court's ruling of violation⁶⁴⁴, stands as one of the most significant pressures exerted on the opposition in recent years in light of the aforementioned crisis between the Constitutional Court and the Court of Cassation regarding his case. The act of disregarding the Constitutional Court by the Parliament and reading the Court of Cassation's decision regarding Atalay in the Plenary demonstrates Turkey's descent into de-constitutionalization⁶⁴⁵. A detailed elaboration of the crisis is omitted here, given its prior mention.

Opposition party members, alongside deputies, frequently find themselves subjected to judicial harassment. This trend is highlighted in the OSCE election report⁶⁴⁶, which points to an anti-terrorist operation conducted in 20 provinces on April 25, 2023. The operation, occurring just twenty days before the elections, led to the detention of over a hundred individuals and drew scrutiny for its alleged aim of silencing the opposition⁶⁴⁷. Such instances are not isolated occurrences limited to the OSCE's latest election

⁶⁴⁰ Thomas Hammarberg and John Howell, *Report on the Functioning of Democratic Institutions in Turkey*, Council of Europe Parliamentary Assembly, 15272, April 21, 2021.

⁶⁴¹ "Stripping Turkish MP's Mandate Is Another Blow to Parliamentary Democracy, Say PACE Monitors," *Council of Europe Parliamentary Assembly*, March 18, 2021, <https://pace.coe.int/en/news/8217/stripping-turkish-mp-s-mandate-is-another-blow-to-parliamentary-democracy-say-pace-monitors->.

⁶⁴² Turkish Constitutional Court, Ömer Faruk Gergerlioğlu, 2019/10634, July 1, 2021.

⁶⁴³ "Opposition MP Loses Seat After Turkish Government Pushes for Execution of Verdict-Reading in Parliament," *Medya News*, January 30, 2024, <https://medyanews.net/opposition-mp-loses-seat-after-turkish-government-pushes-for-execution-of-verdict-reading-in-parliament/>.

⁶⁴⁴ Turkish Constitutional Court, Şerafettin Can Atalay Başvurusu (2), Appl. No. 2023/53898, October 25, 2023.

⁶⁴⁵ For de-constitutionalization see, Gözler, "1982 Anayasası Hala Yürürlükte Mi?"; Ali Acar, "'De-Constitutionalism' in Turkey?" *Verfassungsblog*, May 19, 2016, <https://verfassungsblog.de/de-constitutionalism-in-turkey/#FN2>.

⁶⁴⁶ OSCE, *Republic of Türkiye, General Elections 14 May*, 15.

⁶⁴⁷ "Turkey Arrests 110 Over Alleged Kurdish Militant Ties Ahead of Election," *Reuters*, April 26, 2023, <https://www.reuters.com/world/middle-east/turkey-arrests-110-people-over-alleged-kurdish-militant-ties-sources-2023-04-25/>; "Turkey: 110 Arrested Over Alleged Kurdish Militant Links," *DW*, April 25, 2023, [https://www.dw.com/en/turkey-110-arrested-over-alleged-kurdish-militant-links/a-65424193#:~:text=Turkish%20police%20on%20Tuesday%20detained,the%20southeast%2C%20the%20sources%20said](https://www.dw.com/en/turkey-110-arrested-over-alleged-kurdish-militant-links/a-65424193#:~:text=Turkish%20police%20on%20Tuesday%20detained,the%20southeast%2C%20the%20sources%20said;); "Turkey: More Than 100 Arrested in Pre-Election 'Counter-Terror' Operation," *Middle East Eye*, April 25, 2023, <https://www.middleeasteye.net/news/turkey-arrested-counter-terror-operation>.

observation report; rather, they are prevalent throughout various reports. Such tactics resonate with instances like the 2019 events in Venezuela, where the executive-controlled constitutional court stripped parliamentary immunity from the opposition leader⁶⁴⁸, echoing a pattern of using judicial mechanisms to suppress political dissent and opposition voices.

Similarly, preceding the 2021 elections in Nicaragua, the Ortega government intensified its crackdown on political opponents, including presidential candidates. Notably, raids on their houses conducted without warrants, often during the night, became routine, leading to the subsequent imposition of house arrest or detention⁶⁴⁹. This systematic targeting of political rivals not only underscores the erosion of democratic norms but also exemplifies a global trend of leveraging judicial mechanisms to suppress political dissent and stifle opposition voices.

3.4.2 Dissolution of Political Parties

Dissolution of political parties has historically been a frequently used pressure tool in Turkey, as demonstrated in the first chapter and evidenced since the early years of the Republic. For this reason, party dissolution cannot be characterized as a new hyper-presidential tool used to suppress the opposition. Contrarily, in recent years, the dissolution of political parties has notably diminished compared to previous eras. Following the transition to the presidential system, the only case that draws attention to this issue is the dissolution case of HDP.

In a democratic society, the free formation of political parties and their participation in the power competition are deemed essential. Consequently, political parties benefit from certain protections, with the procedures and regulations regarding their dissolution constituting a key aspect of these safeguards.

⁶⁴⁸ “Venezuela Crisis: Guaidó Defiant After Lifting of Immunity,” *BBC*, April 3, 2019, <https://www.bbc.com/news/world-latin-america-47799263>.

⁶⁴⁹ Jaclyn Diaz, “Police in Nicaragua Detain Opposition Figure At Her Home Following A Raid,” *NPR*, June 3, 2021, <https://www.npr.org/2021/06/03/1002744590/police-in-nicaragua-detain-opposition-figure-at-her-home-following-raid>; “Nicaragua Judge Orders Opposition Figure Jailed For 90 Days,” *AP*, June 8, 2021, <https://apnews.com/article/nicaragua-election-2020-fc0fb7b883fb8268dbfa3b2fa52f00ba>; Ismael López Ocampo and Mary Beth Sheridan, “Nicaragua’s Ortega Arrests Felix Maradiaga,” *Washington Post*, June 9, 2021, <https://www.washingtonpost.com/world/2021/06/08/ortega-arrest-felix-maradiaga-nicaragua-presidential-candidate/>; “Nicaragua: Police Arrest 2 More Opposition Contenders,” *DW*, September 6, 2021, <https://www.dw.com/en/nicaragua-police-arrest-2-more-opposition-contenders/a-57821627>; “Miguel Mora, The Fifth Opposition Presidential Hopeful Arrested in Nicaragua,” *Rio Times*, June 21, 2021, <https://www.riotimesonline.com/brazil-news/mercosur/central-america/miguel-mora-the-fifth-opposition-presidential-hopeful-arrested-in-nicaragua/>; Fabrice Le Lous, “Nicaragua Goes to the Polls with Opponents in Jail and the Government Accused of Crimes Against Humanity,” *Equal Times*, October 8, 2021, <https://www.equaltimes.org/nicaragua-goes-to-elections-with?lang=en#.YXKQ-ueXWbg>.

Under the 1982 Constitution, the authority concerning the dissolution of political parties lies with the Constitutional Court⁶⁵⁰. As articulated in the fourth paragraph of Article 68 of the Constitution

“The statutes and programs, as well as the activities of political parties shall not be contrary to the independence of the State, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to promote or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime.”

The dissolution of political parties is finalized by the Constitutional Court upon the lawsuit filed by the Chief Public Prosecutor of the Court of Cassation⁶⁵¹.

In March 2021, following repeated public calls by Bahçeli, the leader of the MHP, for the dissolution of the HDP over alleged “terrorist links⁶⁵²”, the Chief Public Prosecutor of the Court of Cassation filed a lawsuit in the Constitutional Court. The lawsuit demanded the dissolution of HDP, citing claims that the party has become “the focus of actions carried out in line with the aims of the PKK/KCK terrorist organization”. The indictment denies the political activities and statements of HDP executives and members, including those during the peace negotiations between Turkey and the PKK between 2013 and 2015. The indictment also refers to ongoing prosecutions and trials against 520 former and current party executives and members, mainly on charges of “propaganda for a terrorist organization” and “membership of an armed organization”⁶⁵³.

On March 31, the court rejected the indictment due to procedural deficiencies. These deficiencies included the lack of a relationship between the actions that were claimed to be against the “indivisible integrity of the state with its territory and nation” and the justification provided, which was merely based on the actions being subject to

⁶⁵⁰ Turkish Constitution art. 69/6. “The decision to dissolve a political party permanently owing to activities violating the provisions of the fourth paragraph of Article 68 may be rendered only when the Constitutional Court determines that the party in question has become a centre for the execution of such activities. A political party shall be deemed to become the centre of such actions only when such actions are carried out intensively by the members of that party or the situation is shared implicitly or explicitly by the grand congress, general chairpersonship or the central decision-making or administrative organs of that party or by the group’s general meeting or group executive board at the Grand National Assembly of Turkey or when these activities are carried out in determination by the above-mentioned party organs directly.”

⁶⁵¹ Turkish Constitution art. 69/4. “The dissolution of political parties shall be decided finally by the Constitutional Court after the filing of a suit by the office of the Chief Public Prosecutor of the Court of Cassation.”

⁶⁵² “Nationalist Party Leader Targets HDP Again: Closing It Is A Duty Of Honor,” *Bianet English*, March 18, 2021, <https://bianet.org/haber/nationalist-party-leader-targets-hdp-again-closing-it-is-a-duty-of-honor-240986>.

⁶⁵³ Amnesty International, *Public Statement: Türkiye: HDP’nin Kapatılması İfade ve Örgütlenme Özgürlüğü Haklarını İhlal Eder* (EUR 44/6663/2023) April 11, 2023, <https://www.amnesty.org.tr/public/uploads/files/EUR4466632023TURKISH.pdf>.

investigation and prosecution and the party becoming the focus of these actions. Subsequently, after the decision was sent to the Court of Cassation, the Prosecutor returned the indictment to the Constitutional Court, where it was accepted⁶⁵⁴.

In the face of legal battles and the imminent threat of dissolution before the 2023 elections, the HDP took proactive measures. They transitioned their political operations to the Green Left Party⁶⁵⁵ (*Yeşil Sol Parti*, YSP) and underwent a significant rebranding, emerging as the People's Equality and Democracy Party (*Halkların Eşitlik ve Demokrasi Partisi*, DEM)⁶⁵⁶.

Meanwhile, the legal saga continued. On January 5, 2023, the Constitutional Court suspended the party's treasury aid as a precautionary measure⁶⁵⁷. However, by March 9, 2023, the injunction was lifted due to insufficient grounds for its continuation, reflecting the evolving legal landscape surrounding the party⁶⁵⁸. However, the trial is ongoing.

The ongoing effort to dissolve opposition political parties in Turkey constitutes the most significant blow aimed at suppressing parliamentary opposition. As much as we anticipate the decision of the Constitutional Court at present, it is evident that the right of opposition cannot be safeguarded in an environment where the Court of Cassation and a friendly majority that does not comply with Constitutional Court decisions, as seen in the example of Can Atalay given above.

3.4.3 Challenges Faced by Opposition Mayors

The hyper-presidential system not only stifles parliamentary opposition but also applies coercive measures to localities administered by opposition factions. Particularly pronounced in Kurdish-populated urban centers and exacerbated after the opposition's triumph in the 2019 municipal elections in key metropolitan areas, various mechanisms have been employed that influence the governance of these municipalities. These tactics

⁶⁵⁴ "HDP İddianamesi İçin Kabul İstemi," *TRT Haber*, June 18, 2021, <https://www.trthaber.com/haber/gundem/hdp-iddianamesi-icin-kabul-istemi-589199.html>.

⁶⁵⁵ "HDP Closure Case File Handed Over to Rapporteur," *Bianet English*, April 11, 2023, <https://bianet.org/haber/hdp-closure-case-file-handed-over-to-rapporteur-277146>.

⁶⁵⁶ Ayşe Sayın, "YSP İsmi HEDEP Olarak Değiştirdi, Partinin Eş Başkanları Tülay Hatimoğulları Oruç ve Tuncer Bakırhan," *BBC News Türkçe*, October 15, 2023, <https://www.bbc.com/turkce/articles/c5170yr7qq0o>.

⁶⁵⁷ Ece Toksabay, "Turkish Top Court Freezes Pro-Kurdish Party Funds as Election Loom," *Reuters*, January 5, 2023, <https://www.reuters.com/world/middle-east/turkish-top-court-blocks-pro-kurdish-hdp-bank-accounts-state-media-2023-01-05/>.

⁶⁵⁸ "Halkların Demokratik Partisi'ne Yapılacak Devlet Yardımının Bulunduğu Banka Hesabına Bloke Konulması Talebine İlişkin Ara Karar," *Türkiye Cumhuriyeti Anayasa Mahkemesi*, March 9, 2023, <https://anayasa.gov.tr/tr/haberler/faaliyetler/halkların-demokratik-partisi-ne-yapılacak-devlet-yardımının-bulundugu-banka-hesabına-bloke-konulması-talebine-iliskin-ara-karar/>.

are seen as “post-election mechanisms to manage or reverse election results” of the ruling party that failed to win the elections⁶⁵⁹.

One prominent example entails the replacement of elected mayors particularly in Kurdish-populated cities, who are subsequently replaced by state-appointed trustees called *kayyum*. Before the attempted coup in July 2016, the *kayyum* system primarily functioned within civil law, serving as a mechanism for administering the property of deceased or missing individuals. Since the 2000s, it evolved to address the management of companies in crisis, facilitating the resolution of their financial and administrative challenges⁶⁶⁰.

However, with the adoption of Emergency Decree No. 674 on September 1, 2016, following the state of emergency declared after the coup attempt, the scope of the *kayyum* system was broadened. Article 38 of this emergency decree included a new paragraph to Article 45 of the Municipal Law⁶⁶¹. Previously, in the event of a vacancy in the mayor’s office, for any reason, the municipal council elected a mayor or deputy mayor from among its members⁶⁶². Under the new amendment, in cases where the mayor faces suspension, arrest, or prohibition from public service due to charges related to terrorism or support for terrorist organizations, or in cases where the mayor’s tenure or council membership is terminated, the minister of interior or the governor of that province appoints a *kayyum*⁶⁶³.

Furthermore, Article 40 of the same emergency decree incorporates a provisional article into the Law on Municipalities, mandating the appointment of a *kayyum* in place of mayors, deputy mayors, and council members suspended from office due to ongoing investigations or prosecutions concerning terrorism or aiding and abetting terrorist organizations, irrespective of any prior deputy elections conducted.

According to a 2018 report by the Ministry of Interior, Decree Law No. 674 has led to the suspension of 94 mayors, mostly in Eastern and Southeastern Anatolia, with *kayyums* appointed in their place⁶⁶⁴. Human rights organizations in Turkey have jointly

⁶⁵⁹ Sultan Tepe and Ayça Alemdaroğlu, “How Authorities Win When They Lose,” *Journal of Democracy* 32, no.4 (October 2021): 88.

⁶⁶⁰ Tepe and Alemdaroğlu, “How Authorities Win When They Lose,” 87.

⁶⁶¹ Decree Law on Some Regulations under the State of Emergency no. KHK/674, September 1, 2016.

⁶⁶² It depends on whether the absence of the mayor extends beyond the election period.

⁶⁶³ It depends on whether the city is metropolitan or not; see Municipality Law art. 46. “If the mayor's office becomes vacant for any reason and a new mayor or deputy mayor cannot be elected, the mayor is appointed by the Minister of Internal Affairs in metropolitan and provincial municipalities, and by the governor in other municipalities, until the election is held. The person to be appointed must be qualified to be elected mayor.”

⁶⁶⁴ “Belediyelerdeki Kayyum Sistemi ve Mevcut Durum Raporu,” *Türkiye Cumhuriyeti İçişleri Bakanlığı*, https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/IcSite/illeridaresi/Yayinlar/KayyumRaporu/kayyum_ni

expressed their concern over the appointment of *kayyum*s, arguing that it disregards the will of the people⁶⁶⁵. Furthermore, new regulations allow civil servants to carry out municipal affairs and transactions in *kayyum*-appointed municipalities instead of elected members of the council, greatly limiting local autonomy. Certain municipalities had been under *kayyum* administration for approximately 2 years, 6 months, and 20 days, comprising more than half of the nearly 5-year local government term⁶⁶⁶, contrary to Article 127 of the 1982 Constitution, which emphasizes elected representatives and local government autonomy. The prolonged use of *kayyum*s is considered harmful to democracy, as it undermines the essence of local democracy and the rule of law⁶⁶⁷.

Notably, the case of Mardin Mayor Ahmet Türk highlights the issue, as he was dismissed on terrorism charges in 2019 and replaced by a *kayyum*. Despite being acquitted in 2020, Türk has not been reinstated, leaving the appointed *kayyum* in office. This underscores the urgent need for democratic processes to determine replacements for suspended elected officials, ensuring the preservation of local democracy and the fundamental principles of democracy as a whole.

In the 2019 local elections, the YSK decided not to grant certificates of election to certain Kurdish mayors who were elected. Instead, the YSK decided to award these certificates to the second-place candidates, all of whom were from the ruling AKP. The rationale provided for these decisions was that the HDP candidates had been dismissed from public office by various decree laws during the state of emergency in 2016 on grounds of alleged involvement in the failed coup attempt or terrorism⁶⁶⁸. Interestingly, it should be noted that the YSK had allowed these individuals to run as candidates before the election⁶⁶⁹. This sequence of events underscores the complex interplay between political dynamics, legal proceedings, and electoral processes in Turkey, particularly concerning the treatment of Kurdish politicians and the decisions made by electoral authorities.

[hai_rapor.pdf](#); It is claimed that more than 150 mayors have been dismissed in total. Tepe and Alemdaroğlu, "How Authorities Win When They Lose," 87.

⁶⁶⁵ "Belediyelere Kayyum Atanması Kabul Edilemez," *İnsan Hakları Derneği*, September 12, 2016, <https://www.ihd.org.tr/belediyelere-kayyum-atanmasi-kabul-edilemez/>.

⁶⁶⁶ Cengiz Gürbüz, "Demokrasi Açısından Türkiye'de Kayyum Uygulaması," *Journal of Gaziantep University Faculty of Economics and Administrative Sciences* 1, no. 2 (November 2019): 46.

⁶⁶⁷ Gürbüz, "Demokrasi Açısından Türkiye'de Kayyum Uygulaması", 49.

⁶⁶⁸ European Commission for Democracy through Law (Venice Commission), *Turkey: Opinion on the Replacement of Elected Candidates and Mayors* 979/2019 (Strasbourg: June 18, 2020), para. 9.

⁶⁶⁹ Ferit Aslan, "Diyarbakır Bağlar'da Seçimi Önde Bitiren Zeyat Ceylan: "YSK Bize Tuzak Kurdu,"" *Medyascope*, April 11, 2019, <https://medyascope.tv/2019/04/11/diyarbakir-baglarda-secimi-onde-bitiren-zeyat-ceylan-ysk-bize-tuzak-kurdu/>.

The Congress of Local and Regional Authorities of the Council of Europe found this contrary to the principle of electoral fairness, stating that candidates who are vetted by the YSK in the pre-election period and agree to participate in the elections should also have the right to effectively fulfill their mandate if elected⁶⁷⁰. Additionally, the then-Secretary General of the Council of Europe sent a letter to the YSK on this issue, stating that the acceptance of the second highest number of votes as the winner of the elections was contrary to the general principles of democracy and that the purpose of electoral legislation in a democracy was to respect the will of the people and not to obstruct it⁶⁷¹.

Since the 2019 local elections, Ekrem İmamoğlu, Mayor of İstanbul Metropolitan Municipality, has faced significant pressure, emerging as one of the most targeted mayors. As mentioned earlier, following the decision to rerun the elections for the İstanbul Metropolitan Municipality, the ruling party once again did not secure victory in the subsequent polls.

Another common method of pressure involves attempting to obstruct services. For instance, it is alleged that İmamoğlu has encountered difficulties in including large-scale projects financed through external loans in the presidential investment program⁶⁷². In municipalities governed by the opposition, a notable trend has emerged wherein urban planning authorities are systematically stripped of local control and transferred either to the Ministry of Environment and Urbanization or to special institutions established by the President.

This strategic maneuvering effectively diminishes the authority of opposition-led municipalities⁶⁷³. An illustrative example of this pattern is evident in the case of İstanbul's Gezi Park, which gained prominence as the focal point of extensive anti-regime protests in 2013. Control over the park was notably shifted from the opposition-led İstanbul Metropolitan Municipality to the government's General Directorate of Foundations⁶⁷⁴.

⁶⁷⁰ Andrew Dawson, *Report: Local Elections in Turkey and Mayoral Re-Run in Istanbul (31 March and 23 June 2019)* CG37(2019)14final, Council of Europe Congress of Local and Regional Authorities, October 31, 2019.

⁶⁷¹ Venice Commission, *Turkey: Opinion on the Replacement*, para. 25.

⁶⁷² "İBB'nin Finansmanını Bulduğu 6 Büyük Proje, Yatırım Programına Alınmadı," *Politik Yol*, January 18, 2024, <https://www.politikyol.com/ibbnin-finansmanini-buldugu-6-buyuk-proje-yatirim-programina-alinmadi/>.

⁶⁷³ Ayşe Sayın, "Boğaziçi Başkanlığı – Çevre ve Şehircilik Bakanlığı'nın Hazırladığı Boğaziçi Yasası'nda Değişiklik Öngören Taslağı Hakkında Neler Biliniyor?" *BBC News Türkçe*, October 31, 2019, <https://www.bbc.com/turkce/haberler-turkiye-50244022>; Ali Erkurt, "Cumhurbaşkanlığı Adalar'da İmar Yetkisini Neden Belediyeden Aldı?" *Bianet*, November 7, 2021, <https://bianet.org/yazi/cumhurbaskanligi-adalar-da-imar-yetkisini-neden-belediyeden-aldi-252952>.

⁶⁷⁴ Tuğba Tanyeri-Erdemir, "Erdogan Takes Aim at Istanbul's Symbolic Gezi Park Again," *Balkan Sight*, April 7, 2021, <https://balkaninsight.com/2021/04/07/erdogan-takes-aim-at-istanbuls-symbolic-gezi-park-again/>.

In a related development, the court sentenced İmamoğlu to 2 years, 7 months, and 15 days in prison, along with a political ban for insulting the members of the YSK, in a press statement. İmamoğlu's legal proceedings stemmed from remarks made after the 2019 local elections in İstanbul, where he characterized those annulling votes as "fools" during a speech⁶⁷⁵. This decision made six months before the May 14, 2023, presidential and parliamentary elections could be interpreted as an attempt to prevent İmamoğlu, a potential presidential candidate, from running.

Allegations have surfaced suggesting that the judge presiding over İmamoğlu's case faced pressure to impose a prison sentence and political ban. Notably, despite the judge's eligibility to work in İstanbul for eight more years, he was transferred to Samsun prior to the final hearing⁶⁷⁶. This case exemplifies how the President utilizes his influence over the judiciary to exert pressure on the opposition.

Similarly, in Venezuela, the suppression of opposition mayors serves as a stark example. Beginning in 2014, these mayors, who respected citizens' rights to protest by refraining from taking action against anti-government demonstrations, found themselves summoned to trials. Within a few hours, they were swiftly sentenced to imprisonment, ranging from 12 to 15 months, effectively banning them from political participation. These unconstitutional and unconventional procedures have been utilized against a total of 12 opposition mayors to date⁶⁷⁷, highlighting the erosion of democratic principles and the consolidation of power in the hands of the ruling regime.

These methods form part of a strategic agenda aimed at exalting hyper-presidentialism through the suppression of dissent and the expansion of control, thereby undermining the democracy inherent in elections.

⁶⁷⁵ "Turkish Court Orders Jail Time and Political Ban For Erdoğan Rival," *NBC News*, December 14, 2022, <https://www.nbcnews.com/news/world/turkish-court-orders-jail-time-political-ban-erdogan-rival-imamoglu-rcna61709>.

⁶⁷⁶ "İstanbul Mayor's Trial Clouded as the Judges Were Replaced Again," *Arrested Lawyers Initiative*, August 26, 2023, <https://arrestedlawyers.org/2023/08/26/istanbul-mayors-trial-clouded-as-the-judges-were-replaced-again/>.

⁶⁷⁷ Carlos Ayala Corao, "Venezuela: Lessons of a Crisis Written on the Wall," *Verfassungsblog*, August 21, 2017, <https://verfassungsblog.de/venezuela-lessons-of-a-crisis-written-on-the-wall/>; William Neuman, "Venezuelan Mayors Are Jailed Amid Protests," *New York Times*, March 20, 2014, <https://www.nytimes.com/2014/03/21/world/americas/venezuelan-mayors-are-jailed-amid-protests.html>.

CHAPTER 4

4 CIVIL DISSENT

The transition of Turkey into a hyper-presidential system has corresponded with increased government control and pressure on civil dissent. Despite the constitutional protection of freedom of expression, there have been concerns about the limitations placed on dissenting voices in society. Human rights defenders in Turkey are being targeted and prosecuted under the broad and imprecise Anti-Terrorism Law No. 3713, which, in some cases, has been interpreted to categorize peaceful demonstrations, protests, or dissent as acts of terrorism. The use of terrorism-related charges to address dissent has been a longstanding issue, as evidenced by numerous monographs, articles, and ECtHR rulings. Additionally, dissidents, including journalists, academics, and activists, are also charged with crimes such as insulting the president, inciting public hatred and hostility, and crimes against the constitutional order. Reports have argued that these measures have intensified since the 2017 referendum⁶⁷⁸.

Since the introduction of hyper-presidentialism in Turkey in 2017, the government has implemented various legal regulations, pursued specific policies, and filed lawsuits have increased pressure on civil dissent. Despite the state of emergency officially ending in 2018, its effects have continued through subsequent legislative amendments. In addition, the Law on Associations, which regulates non-governmental organizations (NGOs) and provides an institutionalized means of civil dissent, has been subject to restrictive measures that aim to eliminate this critical avenue of expression. Online platforms, which allow the exercise of the right to dissent more freely, have been subject to increased legal scrutiny, with social media platforms being used as tools of repression. The following paragraphs provide a detailed analysis of the legal regulations, government policies, and significant cases that highlight concerns about restrictions on the right to dissent in Turkey.

4.1 Legal Regulations to Challenge Civil Dissent

4.1.1 Permanent State of Emergency

The state of emergency in Turkey, which began in 2016 and officially ended in 2018, was followed by the passing of Law No. 7145, also known as the Law on Permanent State of Emergency. This law grants the government certain powers that were previously

⁶⁷⁸ “Country Visit: Turkey Needs to Put an End to Arbitrariness in Judiciary and to Protect Human Rights Defenders,” *Council of Europe Commissioner for Human Rights*, July 8, 2019, <https://www.coe.int/en/web/commissioner/-/turkey-needs-to-put-an-end-to-arbitrariness-in-the-judiciary-and-to-protect-human-rights-defenders>.

only available during a state of emergency and has made thousands of permanent modifications to existing laws. While some issues such as detention periods, governors' powers, and public dismissals were previously restricted once the state of emergency was lifted, the enactment of Law No. 7145 allowed the government to retain some of the authority it had during the state of emergency. The stated rationale for the law is that *"since the state of emergency, which had been in effect in our country (Turkey) for two years, will not be extended, (with Law No. 7145) it will be possible to effectively combat existing terrorist organizations within the framework of the principles of the rule of law during the ordinary period"*⁶⁷⁹. Recognizing that the powers available during the ordinary period are insufficient to combat terrorism, the legislator attempted to create a state of exception during the ordinary period by strengthening these powers.

As a result of the modifications introduced by the first article of Law No. 7145, Article 11 of the Provincial Administration Law was amended to grant governors appointed by the president the power to restrict travel and prohibit public assemblies. According to this article,

"In cases where public order or security is deteriorated in such a way as to stop or interrupt ordinary life or there are serious indications that it will be deteriorated, the governor may, for a period not exceeding fifteen days, restrict entry to and exit from certain places in the province for persons suspected of disrupting public order or public security; regulate or restrict the movement of persons, gatherings, and vehicles in certain places or at certain times; and prohibit the carrying and transport of all kinds of weapons and bullets, even if licensed".

According to the aforementioned rule, it restricts the right to hold meetings and demonstrations by authorizing governors to regulate and restrict the gatherings of people at certain places or times in the province. While Article 34⁶⁸⁰ of the Constitution guarantees the right to hold meetings and demonstrations, any limitation on this right must comply with the principle of proportionality, the requirements of the democratic social order, and the restrictions stipulated in Article 13⁶⁸¹ of the Constitution. To prevent

⁶⁷⁹ General Justification of Law No. 7145 <https://www5.tbmm.gov.tr/sirasayi/donem27/yil01/ss1.pdf>.

⁶⁸⁰ Turkish Constitution art. 34. "Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.

The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others.

The formalities, conditions, and procedures to be applied in the exercise of the right to hold meetings and demonstration marches shall be prescribed by law."

⁶⁸¹ Turkish Constitution art. 13. "Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality."

arbitrariness, regulations must be specific, accessible, and foreseeable. However, the phrase “*in cases where public order or security is deteriorated in such a way as to stop or interrupt ordinary life or there are serious indications that it will be deteriorated*” is imprecise and may lead to unforeseeable outcomes. Moreover, the rule contains no safeguards to prevent governors from exercising this authority arbitrarily. The rule lacks any safeguards against the arbitrary exercise of authority by governors. Indeed, as Özgenç points out, governors are not empowered to evaluate the suspicion status of individuals⁶⁸².

Moreover, it should be noted that the locations subject to the governor’s authority to restrict public assembly are public spaces. Thus, even if a public space is ordinarily accessible to the general public, the governor may still restrict the movement and gathering of individuals therein. This provision is derived from State of Emergency Law Article 11, paragraph b. According to this article,

“In the declaration of a state of emergency pursuant to subparagraph (b) of the first paragraph of Article 3 of this Law, the following measures may be taken in addition to the measures stipulated in Article 9 in order to protect general security, public security (asayış), and public order and to prevent the spread of violence:

...

b) To prohibit the movement and gathering of persons and the travelling of vehicles in certain places or at certain times,

... ”.

In other words, Law No. 7145 grants governors the authority to take measures that are typically reserved for states of emergency, even during ordinary times. This excessive power granted to a president-appointed official represents a significant restriction on individual freedoms rather than a necessary anti-terrorism measure.

This was recently exemplified when the governor of Bartın prohibited entry into Amasra, a town of Bartın, for three days in order to prevent protesters from other parts of Turkey from traveling to Bartın to demonstrate against the mining accident that claimed the lives of 41 workers⁶⁸³. After the President referred to the tragedy as “destiny” and his assertion that such accidents are inevitable⁶⁸⁴, efforts by protesters to express concerns and hold authorities accountable were limited, reflecting a broader curtailment of civil dissent.

⁶⁸² İzzet Özgenç, “Toplantı ve Gösteri Yürüyüşü Hürriyeti ile Seyahat Hürriyeti Bağlamında Özgürlük ve Güvenlik İlişkisi,” *Anayasa Yargısı* 35, no. 1 (2018): 190.

⁶⁸³ “Bartın Valiliği, Maden Faciası Protesto Edilmesin Diye Amasra’ya Girişleri Yasakladı,” *BirGün*, October 22, 2022, <https://www.birgun.net/haber/bartın-valiligi-maden-faciasi-protesto-edilmesin-diye-amasra-ya-girisleri-yasakladi-407257>.

⁶⁸⁴ Alex Binley, “Turkey Mine Deaths: President Erdogan Criticised Over ‘Destiny’ Comments,” *BBC*, October 16, 2022, <https://www.bbc.com/news/world-europe-63278124>.

The constitutionality of the law was challenged by the CHP in an annulment case brought before the Constitutional Court⁶⁸⁵. According to the Court, although the phrase in question is abstract to a certain extent, its potential consequences were not uncertain or unpredictable⁶⁸⁶. The Court ultimately upheld the constitutionality of the article, finding that it did not impose an unreasonable restriction on the right to hold meetings and demonstrations⁶⁸⁷.

Another provision amended by the law is Article 13, which pertains to detention periods for terrorism offenses. On July 18, 2021, this provision was modified by Law No. 7333, extending the temporary rule for another year. As a result, until July 31, 2022, temporary article 19 added to the Anti-Terror Law introduced a detention period of forty-eight hours and a maximum of four days for collective crimes against the security of the state and the constitutional order and the functioning of this order, national defense, state secrets, espionage, crimes within the scope of the Anti-Terror Law, or in terms of crimes committed within the framework of organizational activity. These periods may be extended a maximum of two times, effectively allowing for a maximum detention period of twelve days.

However, this provision may raise constitutional concerns as it contradicts Article 19 of the Constitution, which mandates that “...*The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in case of offenses committed collectively within at most four days, excluding the time required to send the individual to the court nearest to the place of arrest...*” Moreover, the Code of Criminal Procedure stipulates that the detention period cannot exceed twenty-four hours from the time of arrest, but it may be extended by up to three days for collective offenses, not exceeding one day each time⁶⁸⁸.

Although the said provision appears to be unconstitutional, the Constitutional Court has provided a different interpretation. The Court ruled that the authorization granted to the public prosecutor in the provision, in accordance with the maximum

⁶⁸⁵ Turkish Constitutional Court, E. 2018/137 K. 2022/86, June 30, 2022.

⁶⁸⁶ Turkish Constitutional Court, E. 2018/137 K. 2022/86, June 30, 2022, para. 18.

⁶⁸⁷ Turkish Constitutional Court, E. 2018/137 K. 2022/86, June 30, 2022, para. 33-34.

⁶⁸⁸ Criminal Procedure Law art. 91/1,3. “1. If the person caught according to the above article is not released by the Public Prosecutor's Office, it may be decided that he/she be detained for the completion of the investigation. The period of detention cannot exceed twenty-four hours from the moment of arrest, excluding the mandatory period for transfer to the judge or court closest to the place of arrest. The mandatory period for transfer to the judge or court closest to the place of arrest cannot exceed twelve hours. 3. In crimes committed collectively, due to the difficulty in collecting evidence or the large number of suspects; The public prosecutor may order in writing to extend the detention period for three days, not to exceed one day at a time. The order to extend the detention period is immediately notified to the detained person.”

detention periods stipulated in the Constitution, as well as the judge's grant of a maximum of two additional detention periods on the condition that the detained person is heard in cases of difficulty in collecting evidence or comprehensive files in intensive investigations following the attempted coup, does not impose a disproportionate restraint. As a result, the court concluded that the rule's limitation is proportional, despite its apparent contradiction with the Constitution and the Code of Criminal Procedure⁶⁸⁹.

Although Article 19 of the Constitution allows for detention periods to be extended during emergencies and war, the Constitutional Court has gone further and deemed it constitutional to prolong these periods by law even when no state of emergency has been declared. As a result, the legislature has effectively created a *de facto* state of emergency, and the Constitutional Court has deemed it suitable. However, this situation has led to criticism regarding the independence of the Criminal Judgeship of Peace, which can review detention and extensions of detention appeals under Article 95/1 of the Code of Criminal Procedure. As a result, this issue is becoming increasingly delicate⁶⁹⁰.

This article also contains a provision that permits police to record the suspect's statement multiple times. According to the fifth paragraph of Article 148 of the Code of Criminal Procedure⁶⁹¹, only the public prosecutor may retake the suspect's statement regarding the same incident, if necessary, while law enforcement officers are only permitted to record the statement once. When another statement is required, the public prosecutor may no longer be able to delegate this task to the police. Despite this limitation, Article 13 of Law No. 7145 states that "*when the need arises to take the suspect's statement again in relation to the same incident, this procedure may be carried out by the public prosecutor or the police force on a written order from the public prosecutor.*" While the Code of Criminal Procedure of 2004 was intended to prevent mistreatment of

⁶⁸⁹ Turkish Constitutional Court, E. 2018/137 K. 2022/86, June 30, 2022, para. 290.

⁶⁹⁰ According to Article 268 of the Code of Criminal Procedure, "The review of the objections to the decisions of the criminal judgeships of peace shall belong to the judgeship following it in number, if there is more than one criminal judgeship of peace in that place; to the judgeship numbered one for the last numbered judgeship; if there is only one criminal judgeship of peace in places where there is no heavy criminal court, to the criminal judgeship of peace in the place where the heavy criminal court is located; if there is only one criminal judgeship of peace in places where there is a heavy criminal court, to the criminal judgeship of peace in the place where the nearest heavy criminal court is located". However, such a horizontal review of decisions does not guarantee impartiality and may even compromise the right to defense counsel. The criminal peace judges who review the decisions are identically ranked judges who work in the same location and may have a tendency to respect each other's decisions. Furthermore, they have the power to restrict the rights of defense counsel and appoint trustees for companies charged with financing terrorism, which could be used as an instrument of repression. This violates the ECHR, which requires a higher judicial authority to oversee the decisions of lower courts. For more information, refer to European Commission for Democracy through Law (Venice Commission), *Turkey: Opinion on the Duties, Competences and Functioning of the Criminal Peace Judgeships* 852/2016 (Strasbourg: March 13, 2017).

⁶⁹¹ Article 148/5 of the Code of Criminal Procedure: "If the need arises to take the suspect's statement again in relation to the same incident, this can only be done by the public prosecutor."

suspects, this exception for terrorism-related offenses creates the possibility of ill-treatment during interrogations, a practice that was common in Turkish law enforcement before that time. The Constitutional Court addressed this provision⁶⁹², and it stated that it is possible to review the legality of retaking statements due to the objection procedure and effective control mechanisms in place to ensure proper implementation. The Court ruled that the provision is not disproportionate in terms of conducting criminal investigations effectively and efficiently, considering the period and the conditions under which the law was in force⁶⁹³.

Furthermore, the law introduced a provision that violates multiple rights. Article 26 allows for individuals to be dismissed from public office without a criminal conviction if they are deemed to have membership, affiliation, or association with terrorist organizations, structures, formations, or groups that threaten national security, as determined by a commission and the relevant minister. Additionally, their passports may be revoked even if they are reinstated later. This provision concerns the application of a decree-law⁶⁹⁴ adopted during the state of emergency for a further four years, resulting in the dismissal of at least 125,678 public officials who were barred from future public service⁶⁹⁵. However, in June 2022, the Constitutional Court annulled some, if not all, of the provisions of this article. Specifically, the Court annulled the provision that those who are reinstated by the State of Emergency Inquiry Commission cannot return to their former positions before their dismissal. As a result, those reinstated by the Commission will be able to return to their previous positions⁶⁹⁶.

The government has maintained emergency powers for four years after the end of the emergency declared under the contested law. This prolonged *de facto* state of emergency aims to suppress civil dissent. Clearly, this legislation, which establishes a permanent state of emergency, enables further consolidation of the hyper-presidential system and contributes to the development of a more authoritarian regime.

⁶⁹² Turkish Constitutional Court, E. 2018/137 K. 2022/86, June 30, 2022.

⁶⁹³ Turkish Constitutional Court, E. 2018/137 K. 2022/86, June 30, 2022, para. 300-302.

⁶⁹⁴ Decree Law on Measures Taken Under the State of Emergency no. 667, July 23, 2016.

⁶⁹⁵ "OHAL İnceleme Komisyonu Tüm Başvuruları Karara Bağladı: İstatistiklerle Kabul ve Ret Oranı," *Euronews*, January 20, 2023, <https://tr.euronews.com/2023/01/20/ohal-inceleme-komisyonu-tum-basvurulari-karara-bagladi-istatistiklerle-kabul-ve-ret-orani>.

⁶⁹⁶ Turkish Constitutional Court, E. 2018/137 K. 2022/86, June 30, 2022.

4.1.2 Challenges on Civil Society

4.1.2.1 Amendment to the Law on Associations

Law No. 7226, titled “The Law on Amendments to Certain Laws,” which was published in the Official Gazette on March 26, 2020, brought about changes to the Law on Associations No. 5253, dated November 4, 2004. Specifically, Articles 23 and 32 were amended, and a provisional additional article was added, requiring associations⁶⁹⁷ to notify their current members and new members, as well as membership terminations, to the unit where the association’s headquarters are located within 45 days. Prior to this amendment, a similar requirement was implemented through the modification of the Regulation on Associations (*Dernekler Yönetmeliği*) in 2018, mandating the reporting of personal data via the Associations Information System⁶⁹⁸.

However, several organizations filed a lawsuit against this amendment⁶⁹⁹, and on April 15, 2021, the Council of State revoked the relevant provisions of the regulation on the grounds that they breached the principles of personal data protection and that such a change could only be made by law⁷⁰⁰. In reaction to the annulment decision, Article 23 of the Law on Associations was revised, and the previously established regulation was granted legal standing.

The original version of Article 23 of the Law on Associations read as follows:

“Associations are required to notify the local administrative authority within thirty days of the general assembly of the original and substitute members elected to the board of directors, supervisory board, and other organs of the association. Changes in the association’s governing bodies and the location of domicile are governed by the same method. The rule stipulates the form, substance, and required documents for the communication of the results of the general assembly and the relevant documents.”

However, with the amendment, Article 23 now mandates that:

“Associations are required to report the names, surnames, dates of birth, and identification numbers of the original and substitute members elected to the board of directors, supervisory board, and other organs of the association, as well as the names, surnames, dates of birth, and identification numbers of those admitted to membership and those whose membership is terminated, within thirty days of the general assembly. Changes in the association’s governing bodies and the location of domicile are governed by the same method. The rule stipulates the form, substance, and required documents for

⁶⁹⁷ In this dissertation, the terms association and NGO are used interchangeably. The use of the word “association” instead of the generally accepted “NGO” comes from the terminology of Turkish law.

⁶⁹⁸ Regulation Amending the Regulation on Associations, October 1, 2018.

⁶⁹⁹ Nurettin Öztatar, “Dernekler Yönetmeliği’nin Fişleme Maddeleri İptal Edildi,” *Gazete Duvar*, September 21, 2021, <https://www.gazeteduvar.com.tr/dernekler-yonetmeliginin-fisleme-maddeleri-iptal-edildi-haber-1535810>.

⁷⁰⁰ 10th Chamber of the Council of State, E. 2018/5249 K. 2021/1855, April 15, 2021.

the communication of the results of the general assembly and the relevant documents.”

Furthermore, the amendment requires a penalty for failure to comply with the notification requirement, with association executives facing a 500 Turkish Liras administrative punishment⁷⁰¹.

Additionally, the amendment to the Law on Associations has been criticized for imposing a disclosure obligation through the notification of association membership, which essentially involves the expression of constitutionally protected views and opinions of individuals⁷⁰² that they cannot be compelled to disclose. On the other hand, the Venice Commission and OSCE/ODIHR have emphasized in their “Joint Guidelines on Freedom of Association” that laws imposing such obligations must be enacted through a democratic process that ensures public participation and review and must be widely accessible⁷⁰³, as stated in Article 9 of the Joint Guidelines. Given that the amendment to the Law on Associations in Turkey was not made in a participatory manner, it is difficult to argue that it meets these standards.

In conclusion, the obligation imposed on civil society to limit its activities is just one aspect of a broader attempt to constrain its freedom. Furthermore, the unclear requirements placed on organizations to disclose their membership lists to the government may deter individuals from participating in civil society. These actions ultimately hinder the organized expression of the right to dissent in society. Although seemingly minor modifications to the legal framework, their implications have a significant effect on stifling civil dissent.

4.1.2.2 The Law on Prevention of Financing the Proliferation of Weapons of Mass Destruction and the Amendment to Regulation on Associations

The passage of Law No. 7262 on the Prevention of Financing the Proliferation of Weapons of Mass Destruction in response to the recommendations of the Financial Action Task Force (FATF) has resulted in significant challenges and pressures for NGOs.

⁷⁰¹ Law on Associations no. 5253, November 23, 2004, art. 32/s. “The penalties to be imposed on those who violate the provisions of this Law are as follows:

s) (Added: 25/3/2020-7226/22 art.) An administrative fine of five hundred Turkish liras will be imposed on association managers who do not fulfill the notification obligation specified in Article 23.”

⁷⁰² Turkish Constitution art. 25. “Everyone has the freedom of thought and opinion.

No one shall be compelled to reveal his/her thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused because of his/her thoughts and opinions.”

⁷⁰³ European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Joint Guidelines on Freedom of Association* 706/2012 (Strasbourg and Warsaw: December 17, 2014), para. 34.

The law contains provisions that permit the dismissal of NGO executives and employees prosecuted under anti-terrorism laws, with *kayyum*s appointed to replace them. NGOs are also burdened with extensive inspection obligations, along with high administrative fines, potential prison sentences, and the risk of activity suspension or dissolution for noncompliance. Additionally, the law restricts online fundraising activities, further hampering the efforts of NGOs. Given the frequent investigations and prosecutions for terrorism offenses faced by those who oppose government policies in Turkey, the restrictive effect of this law on civic space is increasingly apparent. Furthermore, the law extends beyond preventing the proliferation of weapons of mass destruction and the financing of terrorism, as international organizations report a tightening of government control over civil society activities⁷⁰⁴.

4.1.2.2.1 Risk Analysis and Inspection

According to Article 19 of the Law on Associations as amended by Article 13 of Law No. 7262, *“In cases deemed necessary, the Minister of Interior or the chief of the local administrative authority may have public officials inspect whether associations are operating in line with the purposes set out in their statutes and whether they keep their books and records in accordance with the legislation.”* The inspections of associations required by Law No. 7262 are based on a risk analysis. Nonetheless, the regulation fails to specify the criteria or define risk, leading to arbitrary inspections and restrictions on NGOs’ activities. The lack of clarity regarding who conducts inspections further exacerbates the potential for arbitrariness. However, the Constitutional Court examined the provision and found that *“it is regulated in a clear and unambiguous manner that leaves no room for any doubt, it is understood that it is specific, accessible and foreseeable, that it has a legitimate purpose, and that there is no aspect contrary to the requirements of the democratic social order and the principle of proportionality in terms of the right to association”*⁷⁰⁵. Accordingly, it declared that the rule is not unconstitutional.

Additional article 1 of the Regulation on Associations demonstrates that it will lead to arbitrariness by stating, *“The General Directorate shall determine the procedures*

⁷⁰⁴ Council of Europe Parliamentary Assembly, Resolution 2376 (2021) on the Functioning of Democratic Institutions in Turkey (Adopted by the Assembly on April 22, 2021, at 14th sitting), para. 23.3; UN Office of the High Commissioner for Human Rights, Mandates of the Special Rapporteur on the promotions and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, OL TUR 3/2021, February 11, 2021; TÜSEV, Analysis of the Application of Financial Action Task Force Recommendations and its implications on civil society in Turkey (February 2021), 18.

⁷⁰⁵ Turkish Constitutional Court, E. 2021/28 K. 2024/11, January 18, 2024, para. 114

and principles for risk analysis and inspections of associations.” The process of risk analysis was first governed by law, followed by the issuance of a regulation outlining its specifics, and finally left to the initiative of the Directorate General for Relations with Civil Society. With this regulation, the inspection criteria are not specified in a clear manner. Moreover, during the “awareness” training on risk assessment by the Ministry of the Interior’s General Directorate of Relations with Civil Society on June 8, 2022, it was stated that the type of activity, the geographical area in which the activity takes place, and the quantity of foreign aid received are among the evaluation criteria. As a result, civil society organizations in eastern Turkey may face heightened scrutiny due being classified as higher risk. These criteria raise concerns about infringing on the freedom of association⁷⁰⁶ and civil dissent.

As a result, the categorization of certain associations as “risky” based on arbitrary grounds and the subsequent imposition of stringent inspections pose a serious threat to freedom of association, without adequate protections. Additionally, the lack of transparency in these inspections raises concerns that civil society activism critical of the authorities could be stifled under the pretext of conducting “risk analysis”⁷⁰⁷. The Venice Commission has expressed worry in its opinion on the law, stating that the broad scope of the new measures will likely have a chilling effect on all NGOs, particularly those who play a crucial role in democratic societies by offering critical perspectives on the government⁷⁰⁸.

Even in 2004, a comparative report compiled by the Third Sector Foundation of Turkey (*Türkiye Üçüncü Sektör Vakfı*, TÜSEV) highlighted the fact that the inspection of associations in Turkey was significantly stricter than in Europe. In contrast, European laws employ various measures to ensure associations operate with transparency and accountability and provide sufficient information, including the submission of an annual declaration. Moreover, authorities may conduct inspections of association offices under specific conditions with prior notice during regular business hours⁷⁰⁹. However, it is worth noting that, in comparison to Turkey, there are very few European countries where authorities possess the same level of power to conduct comprehensive inspections and impose significant penalties.

⁷⁰⁶ Rumeysa Çamdereli, “‘Risk Değerlendirme Sistemi’ Üzerine,” *Sivil Sayfalar*, June 28, 2022, <https://www.sivilsayfalar.org/2022/06/28/risk-degerlendirme-sistemi-uzerine/>.

⁷⁰⁷ European Commission for Democracy through Law (Venice Commission), *Turkey: Opinion on the Compatibility with International Human Rights Standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction* 1028/2021 (Strasbourg: July 6, 2021), para. 61.

⁷⁰⁸ Venice Commission, *Turkey: Opinion on the Compatibility*, para. 62.

⁷⁰⁹ TÜSEV, *Dernekler Kanunu’nun Bazı Maddelerine İlişkin Karşılaştırmalı Rapor*, No.27 (2004), 7-8.

4.1.2.2.2 Restrictions Placed on the Aid Collection

The aforementioned Law No. 7262 also amended Law No. 2860 on Aid Collection. However, the amendments have nothing to do with the prohibition on weapons of mass destruction and impose additional restrictions on the online fundraising activities of all NGOs. These amendments grant arbitrary control over online aid collection to the authorities in Turkey, thereby constraining the activities and partnerships of civil society organizations through increased fines and burdensome inspections.

These restrictive legal practices and frameworks for fundraising pose a significant barrier to freedom of association, making it difficult for NGOs to operate and expand in Turkey. Prior to the amendments, fundraising activities of NGOs in Turkey were already subject to permits, and this process was subject to numerous conditions, time limits, and bureaucratic and ambiguous evaluation procedures, making it difficult for them to access the financial resources they require to carry out their objectives and activities.

According to Article 6 of the Law on Aid Collection, individuals and organizations may not collect aid without the permission of a competent authority. In 2020, the amendment extended the scope of this authorization to include online fundraising activities;

“If it is determined that an unauthorized fundraising activity is being conducted on the internet, the relevant governorship or the Ministry of the Interior shall notify the content and/or hosting provider via electronic mail or other means of communication using the information obtained through communication tools, domain names, IP addresses, and similar sources on the internet pages to remove the fundraising-related content. If the content is not removed by the content and/or hosting provider within twenty-four hours, or if the information on the content and hosting provider cannot be obtained or the notification cannot be made due to technical difficulties, the relevant governorship or the Ministry of the Interior may petition the criminal judge of peace for a decision to block access to the content in question on the internet. The judge must make a decision on the request within twenty-four hours and send it directly to the Information and Communication Technologies Authority. This decision is subject to appeal under the terms of the Code of Criminal Procedure, dated 4/12/2004 and numbered 5271. The decision to block access under this section is made by preventing access to the content (URL, etc.).”

To explain it in more detail, the amendment to the Law on Aid Collection authorizes the Ministry of the Interior to identify “unauthorized” online fundraising activities and request that a judge block such content. The judge is required to make a decision on the request within 24 hours without a hearing, which means that the organization that is the subject of the content blocking request has no opportunity to defend itself against the allegation of unauthorized fundraising, which makes it more

challenging for NGOs to raise their own funds. Additionally, the amendment made to Article 29 of the Law on Aid Collection imposes administrative fines ranging from 5,000 to 100,000 Turkish Liras for unauthorized fundraising, with doubled fines if fundraising is conducted online⁷¹⁰. The vast difference between the minimum and maximum amounts of this administrative fine, as well as the lack of clarity regarding the criteria by which this administrative fine will be determined and applied, make this option susceptible to arbitrary application. It is inevitable that the penalties will discourage many small-budget local NGOs from seeking funding.

Besides, the objective criteria used by the competent authorities to evaluate applications for fundraising should be disclosed to avoid discriminatory practices. However, obtaining permission to collect aid is also extraordinarily difficult due to the highly subjective criteria stipulated in this law⁷¹¹. These criteria grant the administration unrestricted discretionary authority, potentially leading to contentious decisions. Furthermore, the permitting authority can transfer the collected aid to another organization of its choosing if it determines that the aid collected is insufficient to achieve the goal. This discourages civil society organizations from applying for a permit to collect aid, particularly since some associations operating for the same purpose have been permitted to fundraise while others have not, resulting in discrimination and exclusion in civil society. The problem is not that associations are exempt from aid collection permits, but rather that the government's decisions are neither transparent nor objective. There is no information available regarding the rules by which authorities issue permits. For instance, in 2021, the İstanbul Governorship denied permission to the İstanbul Foundation, which is affiliated with the İstanbul Metropolitan Municipality of the opposition CHP, to raise funds for a campaign to deliver sacrificial meat to families in need during *Kurban Bayramı* (the Feast of Sacrifice), one of the most important Muslim holidays. However, after Mayor of İstanbul Municipality's response on social media, the decision was reversed and permission to fundraise was granted⁷¹². Evidently, there are no

⁷¹⁰ Law on Aid Collection no. 2860, June 25, 1983, art. 29/1. "(Amended: 27/12/2020-7262/10 art.) Those who collect aid without permission, contrary to the provisions of this Law, will be given an administrative fine from five thousand Turkish liras to one hundred thousand Turkish liras. In case of collecting donations on the internet without permission, an administrative fine ranging from ten thousand Turkish liras to two hundred thousand Turkish liras is imposed."

⁷¹¹ Law on Aid Collection no. 2860, June 25, 1983, art. 9/1. "Upon application by the authorities authorized to grant permission; An examination is made on the importance of the work, the qualifications of those who will undertake the aid collection activity, the suitability of the service to be provided for the purpose and public interest, whether the aid collection activity will be successful or not, and other issues deemed necessary, and the results are notified to the applicants within two months at the latest."

⁷¹² "İçişleri Bakanlığı, İmamoğlu'nun Tepkisinin Ardından Kurban Bağışı Yapılmasına İzin Verdi," *Euronews*, July 2, 2021, <https://tr.euronews.com/2021/07/02/ekrem-imamoglu-dan-bakan-soylu-ya-tepki-kurban-bag-s-toplamam-za-izin-verilmiyor>.

objective criteria for evaluating fundraising applications; instead, the evaluation is left to the discretion of the public authority. In addition, Article 8 of Law No. 7262 added a paragraph to Article 9 of the Law on Aid Collection, which states that “*the procedures and principles pertaining to domestic and foreign aid shall be regulated by by-law.*”

While regulations have covered the activity of “collecting” aid since the Ottoman Empire, this amendment seeks to limit the activity of “giving” aid for the first time in Turkey’s history. However, only the free will of natural persons and the legal status of legal entities can determine whether or not to give aid, and financial transactions involving criminal elements are already governed by criminal law. The contested regulation also authorizes the administration to regulate by by-law without any domestic or foreign aid criteria⁷¹³, which violates Article 13 of the Constitution’s principle of legality.

In the 2019 Turkey Report published by the European Commission, it was noted that the law, prior to the amendments, imposed onerous requirements that deterred civil society organizations from fundraising⁷¹⁴. However, the provisions that were introduced after the amendment have worsened these conditions and have added significantly more restrictive measures compared to the initial regulation that was enacted in Turkey on December 15, 1915⁷¹⁵.

Access to resources is essential to the survival of NGOs and their ability to independently carry out their missions. The recommendation of the CoE Committee of Ministers to member states on the legal status of NGOs in Europe states that “*NGOs should be free to solicit and receive funding—cash or in-kind donations—not only from public bodies in their own state but also from institutional or individual donors, another state, or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange, and money laundering, and those on the funding of elections and political parties*”⁷¹⁶. These measures are crucial to the enjoyment of human rights by the recipients of the work done by NGOs. Thus, Law No. 7262 poses a threat not only to the existence of these organizations but also to the enjoyment of human rights by their

⁷¹³ STGM, *Kitle İmha Silahlarının Yayılmasının Finansmanının Önlenmesine İlişkin Kanun Teklifi Hakkında Genel Görüşler* (December 20, 2020), 7. https://www.stgm.org.tr/sites/default/files/2020-12/kisyok_bilginotu_stgm-1.pdf.

⁷¹⁴ European Commission, *Commission Staff Working Document Turkey 2019 Report* COM(2019)260final (Brussels: May 29, 2019), 16.

⁷¹⁵ STGM, *Kitle İmha Silahlarının Yayılmasının Finansmanının Önlenmesine İlişkin Kanun Teklifi Hakkında Genel Görüşler*, 6.

⁷¹⁶ Council of Europe Committee of Ministers, *Recommendation CM/Rec(2007)14 to Member States on the Legal Status of Non-Governmental Organizations in Europe* (Adopted by the Committee of Ministers on October 10 2007 at the 1006th sitting), para. 50.

beneficiaries⁷¹⁷. It is evident that the freedom of association in the civil sphere is under threat, as the amendments to the fundraising legislation increasingly distance it from the principle of being “necessary in a democratic society”.

4.1.2.2.3 Removal of the NGO Administration and Replacement of Board Members

Article 30/A⁷¹⁸, which was added to the Law on Associations by Law No. 7262, permits the suspension of relevant personnel or individuals holding office in the association’s organs, excluding its general assembly, if they are prosecuted for crimes related to the association’s activities falling under the Law on the Prevention of Financing of Terrorism or for offenses such as drug trafficking, manufacturing, and laundering the proceeds of crime under the Turkish Penal Code. While the article states that the suspension is temporary, it does not specify a time limit, and investigations in Turkey can take years. Therefore, these “temporary” measures may last for an extended period of time. Moreover, the Ministry of Interior’s decision to impose such measures does not require approval from judicial bodies. Additionally, this article provides the government with the authority to appoint a *kayyum* to replace an association’s board of directors. Finally, this measure may infringe upon the presumption of innocence.

Furthermore, the second paragraph of Article 30/A authorizes the Minister of the Interior to temporarily suspend an association’s activities if the measure specified in the first paragraph deemed insufficient and any delay poses a risk. This suspension must be followed by an immediate court application, and the court will decide on the suspension within 48 hours, which could potentially lead to the dissolution of the association. The association may request the lifting of the suspension, which the court will decide on

⁷¹⁷ UN Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association*, Maina Kiai A/HRC/23/39, para. 9.

⁷¹⁸ Law on Association no. 5253, November 23, 2004, art. 30/A. “(Added:27/12/2020-7262/15 art.)

In the event that prosecution is initiated against those who work in organs other than the general assembly of the association or the relevant personnel within the scope of the activities of an association, due to crimes within the scope of the Law on the Prevention of Financing of Terrorism, manufacturing and trading of drugs or stimulants in the Turkish Penal Code, or laundering of assets arising from crime, these persons or the bodies in which these people serve may be suspended by the Minister of Internal Affairs as a temporary measure.

If the measure specified in the first paragraph is not sufficient and there is a risk of delay, the Minister of Internal Affairs may temporarily prevent the association from operating and immediately apply to the court. The court gives its decision regarding the temporary detention from activity within forty-eight hours and continues the trial in accordance with Article 89 of the Turkish Civil Code. Those concerned may request the lifting of the temporary detention order from the activity at any time. The court decides on the application without delay.

Article 27 and the relevant provisions of the Turkish Civil Code shall apply to the appointments to be made in place of the bodies and members of these bodies who are temporarily suspended from duty in accordance with the first paragraph and subparagraph (f) of the first paragraph of Article 32.”

promptly. However, the regulation stipulates that failure to submit the decision to the court “immediately” and neglecting to examine appeals “without delay,” could result in the “temporary” measure becoming *de facto* “permanent”⁷¹⁹. Although Article 33⁷²⁰ of the Constitution requires the decision to suspend activity to be submitted to the presiding judge within 24 hours, this is not explicitly stated in the article. This omission suggests that, the second paragraph violates both the proportionality principle and the language of the Constitution. Additionally, the Law on Associations has amended Article 32’s sanctions⁷²¹, increasing the penalty of imprisonment from three months to one year and raising the maximum fine that can be imposed as an alternative to imprisonment.

Human rights organizations in Turkey reported that they had to ensure that members against whom criminal proceedings on terrorism-related charges were pending did not sit on their governing and supervisory bodies, handed over their positions, and, in some cases, expelled them from the organization to avoid the government appointing *kayyum*s to their boards or disbanding their organizations⁷²². These measures have a chilling effect, and even during interviews conducted by Amnesty International in the days following the law’s publication, the impact was evident. It is worth noting that rights defenders are heavily targeted for investigation and prosecution for crimes under anti-terrorism laws in Turkey, placing organizations working on human rights under considerable pressure from the government.

Furthermore, the amendments made to the law on associations in Turkey go beyond the fight against the laundering of criminal proceeds and the financing of

⁷¹⁹ STGM, *Kitle İmha Silahlarının Yayılmasının Finansmanının Önlenmesine İlişkin Kanun Teklifi Hakkında Genel Görüşler*, 5.

⁷²⁰ Turkish Constitution art. 33/5. “Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. However, where it is required for, and a delay constitutes a prejudice to, national security, public order, prevention of commission or continuation of a crime, or an arrest, an authority may be vested with power by law to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his/her decision within forty-eight hours; otherwise, this administrative decision shall be annulled automatically.”

⁷²¹ Law on Associations art. 32/k. “The penalties to be imposed on those who violate the provisions of this Law are as follows:

k) (Amended: 27/12/2020-7262/16 art.) Those who do not comply with the obligations in the third paragraphs of Articles 9 and 19 and the books and documents that must be kept become unreadable or lost for an unforeseen reason, provided that the necessary care and attention is paid. In this case, those who do not apply to the competent court of the place where the headquarters of the association is located within fifteen days from the date of learning, or who fail to present this document during the inspection, are punished with imprisonment from three months to one year or a judicial fine. Those who act contrary to the obligations in the first and second paragraphs of Article 21 will be given an administrative fine from five thousand Turkish liras to one hundred thousand Turkish liras.”

⁷²² “Türkiye: Terörizmin Finansmanının Önlenmesi Hakkında Kanun, Daha Şimdiden Sivil Toplum Üzerinde ‘Caydırıcı Etki’ Yarattı,” *Uluslararası Af Örgütü*, October 21, 2021, <https://www.amnesty.org.tr/icerik/turkiye-terorun-finansmaninin-onlenmesi-hakkinda-kanun-simdiden-sivil-toplum-uzerinde-caydirici-etki-yaratti>.

terrorism. This is evident from the general justification of the law, the article justifications, and the regulation itself. These amendments exceed the scope of the fight against terrorism and do not restrict themselves to it, raising concerns about their impact on human rights and civil society in Turkey⁷²³.

4.1.3 Censorship

In recent years, Turkey has increasingly employed measures that curtail freedom of expression and press freedom. As of the time of writing this dissertation, 61 journalists are imprisoned for their articles or reporting⁷²⁴, and hundreds of others, including writers, bloggers, and social media users, face trial for their news, posts, opinions, and likes. The government's sweeping crackdown, which escalated following the 2016 coup attempt, not only targeted journalists but also a significant number of online and offline media outlets.

Since the mid-2000s, there have been concerns that the Savings Deposit Insurance Fund has been used to facilitate the transfer of ownership of mainstream media outlets to companies affiliated with the government⁷²⁵. Consequently, institutions such as the Turkish Radio and Television Corporation (TRT) and other media outlets owned by businesspeople with reported connections to the government have become prominent, with many of these outlets aligning with government policies. According to various organizations, journalists, and researchers monitoring press freedom, it has been suggested that the Turkish government now has significant influence over 95 percent of the national print and broadcast media⁷²⁶. As a result, independent or opposition journalists increasingly rely on the internet and social media platforms to reach their audiences, in contrast to traditional media outlets.

Following the state of emergency, during which 178 media outlets were reportedly shut down⁷²⁷, concerns have arisen regarding the level of control exerted by the government over most remaining media outlets, both directly and indirectly. Attention has also shifted to the regulation of the internet, a platform where diverse opinions can

⁷²³ STGM, *Kitle İmha Silahlarının Yayılmasının Finansmanının Önlenmesine İlişkin Kanun Teklifi Hakkında Genel Görüşler*, 2-3.

⁷²⁴ "Cezaevindeki Gazeteciler ve Medya Çalışanları", MLSA, <https://www.mlsaturkey.com/tr/cezaevindeki-gazeteciler-ve-medya-calisanlari/>.

⁷²⁵ Free Web Turkey, *Haberin Sonu: Türkiye'de İnternet Sansürü* (2020), 1.

⁷²⁶ "24 Temmuz Basın Bayramı'nı Kutlamıyoruz," TGS, July 23, 2019, <https://tgs.org.tr/24-temmuz-basin-bayramini-kutlamiyoruz/>; Free Web Turkey, *Haberin Sonu*, 1.

⁷²⁷ Feray Salman and Aysel Ergün, "Kapatılan Basın, Yayın, Radyo, Televizyon ve Haber Ajansları," *Bianet*, January 9, 2017, <https://bianet.org/bianet/medya/182458-kapatilan-basin-yayin-radyo-televizyon-ve-haber-ajanslari>; Free Web Turkey, *Haberin Sonu*, 1.

still be expressed. Reports indicate that individuals have been prosecuted for their online posts, with access to certain websites being banned and online content being removed⁷²⁸. These developments have raised concerns about the restriction of online freedom of expression, particularly as Turkey undergoes changes linked to its transition towards hyper-presidentialism. These measures appear to have the potential to limit opposition voices, contributing to the increasing centralization of authority within the presidency.

4.1.3.1 Amendments to the Internet Law

Internet Law No. 5651 has undergone multiple amendments since its implementation in 2007, with the latest revisions occurring in 2020 and 2022 under the new system. Prior to these amendments, the law was already contentious due to its censorship measures. However, the changes in 2020 and 2022 have further exacerbated the issue. The 2020 amendment was introduced following a series of tweets allegedly insulting high-profile figures, purportedly to eliminate online hate speech and harassment⁷²⁹. Nevertheless, these amendments have raised concerns about the potential for increased censorship, as social media platforms may be pressured to remove content to avoid severe penalties.

Under the law, social media platforms with more than one million daily users from Turkey are required to appoint a local representative based in Turkey who is a Turkish citizen. Even if daily access from Turkey exceeds ten million, the designated representative must be a branch established directly by the social media platform⁷³⁰, which has raised concerns over increased censorship and surveillance by the government. Noncompliance may lead to fines of up to 40 million Turkish Liras, advertising bans, and

⁷²⁸ Free Web Turkey, *Haberin Sonu*.

⁷²⁹ “Turkey: Ruling Party Moves to Tighten Grip on Social Media Giants,” *Al Jazeera*, July 21, 2020, <https://www.aljazeera.com/economy/2020/7/21/turkey-ruling-party-moves-to-tighten-grip-on-social-media-giants>.

⁷³⁰ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, additional art. 4/1. “(Added:29/7/2020-7253/6 art.)

(1) Foreign social network provider with more than one million daily access from Turkey; The Institution designates at least one authorized person as its representative in Turkey in order to fulfill the requirements of notifications, notifications or requests to be sent by the Union, judicial or administrative authorities, to respond to applications made by individuals within the scope of this Law and to ensure the fulfillment of other obligations within the scope of this Law, and this person It includes contact information on its website in a way that is easily visible and directly accessible. The social network provider is obliged to notify the Authority of this person's identity and contact information. (Amended sentence: 13/10/2022-7418/34 art.) If the representative is a real person, this person must be a resident of Turkey and a Turkish citizen. (Additional sentences: 13/10/2022-7418/34 art.) If the daily access from Turkey is more than ten million; The real or legal person representative determined by the foreign social network provider is fully authorized and responsible in technical, administrative, legal and financial terms, without prejudice to the responsibilities of the social network provider, and in case this representative is a legal person, it is a capital company established directly by the social network provider. It is mandatory to have a branch.”

internet bandwidth reductions of up to 90 percent, effectively blocking access to the platforms⁷³¹. Although social media platforms initially opposed this regulation, they established their representative offices in Turkey in 2021 after facing heavy fines⁷³². However, having in-country offices may expose employees to significant risks as the Turkish government gains greater control over the companies⁷³³.

Additionally, the regulation requires social media platforms to host the data of Turkish users in Turkey, raising concerns over the potential disclosure of personal information to the government⁷³⁴. However, the relevant article of the law and associated procedures and principles do not specify whether social media platforms will retain user data in Turkey, under what conditions and in what manner, or whether they will share this data in bulk with the Information and Communication Technologies Authority (ICTA) or other institutions⁷³⁵. Social media platforms collect a wide range of personal information about their users, including age, height, weight, opinions, behaviors, health status, and other aspects of their personalities that are intended to be kept private. The law creates the risk that personal information may be disclosed to the government, which may lead

⁷³¹ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, additional art. 4/2. “(Added:29/7/2020-7253/6 art.)

(2) The Institution shall notify the social network provider that does not fulfill its obligation to determine and notify a representative regulated in the first paragraph. If this obligation is not fulfilled within thirty days from the notification, the President will impose an administrative fine of ten million Turkish liras on the social network provider. If this obligation is not fulfilled within thirty days from the notification of the administrative fine, an additional administrative fine of thirty million Turkish liras will be imposed. If this obligation is not fulfilled within thirty days from the notification of the administrative fine imposed for the second time, the President prohibits natural and legal persons who are taxpayers resident in Turkey from placing new advertisements on the relevant social network provider, and in this context, a new contract cannot be established and no money transfers can be made regarding this. If this obligation is not fulfilled within three months from the date of the advertising ban decision, the President may apply to the criminal judgeship of peace to reduce the internet traffic bandwidth of the social network provider by fifty percent. If the said obligation is not fulfilled within thirty days from the implementation of the judge's decision regarding the acceptance of the application, the President may apply to the criminal judgeship of peace to reduce the internet traffic bandwidth of the social network provider by up to ninety percent. In his decision upon the second application, the judge may determine a lower rate, taking into account the nature of the service provided, provided that it is not less than fifty percent. The President may object to these decisions in accordance with the provisions of Law No. 5271. The decisions made by the judge are sent to the Institution to be notified to access providers. The requirements of the decisions are carried out by the access providers immediately and within four hours at the latest after the notification. In case the obligation to appoint and notify a representative is fulfilled; One quarter of the administrative fines imposed will be collected, the advertising ban will be lifted and the judge's decisions will automatically become null and void. The Authority notifies access providers to end the intervention in internet traffic bandwidth.”

⁷³² Yaman Akdeniz, “Blog: Regulating Disinformation and Social Media Platforms ‘alla Turca’,” *Article 19*, May 19, 2022, <https://www.article19.org/resources/regulation-of-social-media-platforms-in-turkey-internet-law/>.

⁷³³ “Turkey: New Internet Law Threatens Freedom of Expression Online,” *Article 19*, July 28, 2020, <https://www.article19.org/resources/turkey-new-internet-law-threatens-freedom-of-expression-online/>.

⁷³⁴ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, additional art. 4/6. “(Added:29/7/2020-7253/6 art.)

(6) Domestic or international social network providers with more than one million daily access from Turkey shall take the necessary measures to host the data of users in Turkey in Turkey.”

⁷³⁵ Yaman Akdeniz and Ozan Güven, *Üst Düzey Kamu Şahsiyetlerinin İncinen İtibarı, Onur ve Haysiyet Yılı: Engelliweb 2021* (İfade Özgürlüğü Derneği: 2022), 96.

to its misuse by individuals in power to suppress political opposition or influence elections⁷³⁶. However, Additional Article 4/5 stipulates that during the investigation phase, the public prosecutor and the court presiding over the trial may request information necessary to identify those who create and disseminate content related to specific crimes. These crimes include sexual abuse of children, publicly disseminating misleading information, disrupting the unity and territorial integrity of the state, crimes against the constitutional order and the functioning of this order, crimes against state secrets, and espionage. If the required information is not provided, the prosecutor may petition the Ankara Criminal Judge of Peace to reduce the foreign social media platform's internet bandwidth by 90 percent. With the exception of child sexual abuse, many of these offenses are frequently used to target dissent and journalists, which raises concerns that social media platforms will be compelled to share user data with the authorities, further increasing the prevalence of self-censorship among Turkish social media users⁷³⁷.

⁷³⁶ Free Web Turkey, *Haberin Sonu*, 1.

⁷³⁷ Svea Windwehr and Jillian C. York, "Turkey's New Internet Law is the Worst Version of Germany's NetzDG Yet," *EFF*, July 30, 2020, <https://www.eff.org/tr/deeplinks/2020/07/turkeys-new-internet-law-worst-version-germanys-netzdg-yet>.

Furthermore, Articles 9⁷³⁸ and 9/A⁷³⁹ of the Law allow for the removal of content and blocking of access in the event of a violation of personal rights and blocking of access

⁷³⁸ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, art. 9. “(Amended: 6/2/2014-6518/93 art.)

(1) Natural and legal persons, institutions and organizations who claim that their personal rights have been violated due to the content published on the internet can request the removal of the content from publication by applying to the content provider or, if they cannot reach this, the hosting provider by warning method, or they can directly apply to the criminal judge of peace to request the removal of the content and/or or may request that access be blocked.

(2) Requests of people who claim that their personal rights have been violated due to the content broadcast on the internet are answered by the content and/or hosting provider within twenty-four hours at the latest.

(3) In line with the requests of those whose personal rights have been violated due to the content published on the internet, the judge may decide to remove the content and/or block access within the scope specified in this article.

(4) The judge essentially makes the access blocking decisions within the scope of this article by blocking access to the content (in the form of URL, etc.) only in relation to the publication, section, section where the violation of personal rights occurs. Unless necessary, it cannot be decided to block access to the entire publication on the website. However, if the judge is convinced that the violation cannot be prevented by blocking access to the content by specifying the URL address, he may also decide to block access to the entire publication on the website, provided that he also states the reason.

(5) Decisions given by the judge within the scope of this article to remove content and/or block access are sent directly to the Union.

(6) The judge shall decide on the application made within the scope of this article, without holding a hearing, within twenty-four hours at the latest. An objection may be filed against this decision in accordance with the provisions of the Criminal Procedure Code No. 5271 dated 4/12/2004.

(7) If the content subject to access blocking is removed from publication, the judge's decision automatically becomes invalid.

(8) (Amended: 29/7/2020-7253/5 art.) In accordance with the decision to remove and/or block access to the content sent by the Union to the relevant content and hosting providers and access providers, the relevant content and hosting providers shall be notified immediately, within four hours at the latest. It is fulfilled by the access provider.

(9) In the event that the publication regarding the violation of personal rights, which is the subject of the judge's decision to remove the content and/or block access within the scope of this article (...), is also published on other internet addresses, the current decision shall also be applied to these addresses if the relevant person applies to the Union. (Additional sentences: 13/10/2022-7418/33 art.) Objection against the acceptance of the application by the Union is made to the judgeship that made the decision. The provision of this paragraph does not apply to decisions to block access to the entire publication on the website.

(10) (Added: 29/7/2020-7253/5 art.) If requested by those whose personal rights have been violated due to the content published on the internet, the judge may decide not to associate the applicant's name with the internet addresses subject to the decision within the scope of this article. The decision indicates which search engines will be notified by the Union.

(11) Those responsible for content, hosting and access providers who do not comply with the decision of the criminal judge of peace in accordance with the conditions and within the time specified in this article are punished with a judicial fine of five hundred days to three thousand days.”

⁷³⁹ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, art. 9/A. “ARTICLE 9/A- (Added: 6/2/2014-6518/94 art.)

(1) Persons who claim that their privacy has been violated due to the content published on the internet may apply directly to the Authority and request that the measure of blocking access to the content be implemented.

(2) In this request; The full address (URL) of the publication that caused the violation of the right, an explanation of the aspects in which the right was violated, and information to prove the identity information are included. If this information is missing, the request will not be processed.

(3) The President shall immediately notify the Union of this request for implementation, and access providers shall comply with this measure request immediately, within four hours at the latest.

(4) Access blocking is implemented by blocking access to the content (in the form of URL) regarding the publication, part, section, image, video that violates the privacy of private life.

(5) Persons requesting access to be blocked shall submit their request to block access to the decision of the criminal judge of peace within twenty-four hours from the time of making the request, on the grounds that the privacy of private life has been violated due to the content of the broadcast on the internet. The judge evaluates whether the privacy of private life has been violated due to the content published on the internet,

to content in the event of a violation of the right to privacy. The recent addition of paragraph 10 to Article 9 indirectly recognizes the right to be forgotten in Turkey. This paragraph allows individuals to request that their name not be associated with internet addresses subject to decisions made under this article if their personal rights have been violated. This clause will be examined in greater depth below. Domestic or foreign social media platforms with over one million daily accesses from Turkey must respond to such requests within forty-eight hours, as per the law⁷⁴⁰. Failure to comply with these obligations will result in a fine of five million Turkish lira, imposed by the President of the ICTA⁷⁴¹. These obligations also extend to news websites⁷⁴², and the severity of the penalties will compel social media platforms and news websites to comply with requests for content removal and access blocking.

Despite a lack of official information, a report by the *İfade Özgürlüğü Derneği* (Freedom of Expression Association) sheds light on the prevalence of blocked websites, URLs, and social media content in Turkey. The report, called *Engelli Web* (Web Blocked), collected data up to the end of 2021 and found that 28,474 news articles had been blocked and 22,944 had been removed or deleted for violating personal rights between 2014 and 2021. The number of blocked news articles increased from 529 in 2014 to 5,436 in 2021⁷⁴³.

In 2021, many news stories of immediate public interest were blocked or removed, and there was a surge in political blocking decisions and content removal decisions, particularly due to the President's applications to criminal judgeship of peace. These

announces his decision within forty-eight hours at the latest and sends it directly to the Institution; Otherwise, the access blocking measure is automatically lifted.

(6) The President may object to this decision made by the judge in accordance with the provisions of Law No. 5271.

(7) If the content subject to access blocking is removed from publication, the judge's decision automatically becomes invalid.

(8) In cases where delay is harmful due to violation of privacy of private life, access is blocked by the Institution upon the direct order of the President. (Repealed sentence: 26/2/2014-6527/18 art.)

(9) (Added: 26/2/2014-6527/18 art.) The decision to block access given by the President within the scope of the eighth paragraph of this article (...) shall be submitted for the approval of the criminal judge of peace within twenty-four hours. The judge announces his decision within forty-eight hours."

⁷⁴⁰ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, additional art. 4/3. "(Added:29/7/2020-7253/6 art.)

(3) Domestic or international social network providers with more than one million daily access from Turkey will respond positively or negatively to applications made by individuals regarding the content within the scope of Articles 9 and 9/A within forty-eight hours from the application. is obliged to answer. Negative answers are given with justification."

⁷⁴¹ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, additional art. 4/8. ""(Added:29/7/2020-7253/6 art.)

(8) The President shall impose an administrative fine of five million Turkish liras on the social network provider who does not fulfill the obligation in the third paragraph, and ten million Turkish lira on the social network provider who does not fulfill the obligation in the fourth paragraph."

⁷⁴² Windwehr and York, "Turkey's New Internet Law is the Worst Version of Germany's NetzDG Yet".

⁷⁴³ Akdeniz and Güven, *Üst Düzey Kamu Şahsiyetlerinin İncinen İtibarı, Onur ve Haysiyet Yılı*, 33.

applications resulted in the blocking and removal of content on platforms such as Ekşi Sözlük, Facebook, YouTube, and Twitter, as well as news articles. At the request of President Erdoğan, 25 internet addresses were taken down and made inaccessible. The decision to remove these addresses was based on news articles that were attributed to the then-Chairman of the CHP, Kılıçdaroğlu, and CHP Deputy Chairman Sezgin Tanrikulu during the 2014-2015 period. The court ruled that the content of these articles “*seriously violated the requestor’s personal rights and harmed his reputation.*” However, the ruling failed to specify which news or discourse was found to be offensive⁷⁴⁴.

The Free Web Turkey report⁷⁴⁵ supports the idea that the government’s efforts to censor the Internet are aimed at stifling public debate on government policies. The report found that during the time it covered, at least 1910 URLs were affected by 150 access-blocking decisions, with 22 of these decisions specifically involving the blocking of news websites (26 domain names) or URLs containing published news stories (870 news URLs). 368 of the blocked publications were critical of the administration, municipalities, officials, or related individuals. The report also analyzed the blocking of domain names on opposition websites. The data indicates that the government and Criminal Judgeships of Peace heavily censor content critical of the country’s governance, as 101 of the 150 analyzed decisions (excluding blocked domains) involved direct news blocks.

It is also worth noting that when access to news articles is restricted, it often results in serious consequences for the journalists who wrote them. For instance, OdaTV was blocked after Barış Pehlivan and Hülya Kılınç were detained for their coverage of a member of the Turkish National Intelligence Organization’s death in Libya⁷⁴⁶. Similarly, journalist Fatih Portakal’s social media posts criticizing the government’s response to the COVID-19 pandemic were blocked, and he was subsequently indicted⁷⁴⁷.

Additionally, social media platforms must comply with certain provisions that mandate the provision of information to the authorities on their information systems, algorithms, data processing mechanisms, and commercial strategies. Failure to comply with these requirements may result in fines of up to 3 percent of their global turnover from the previous year, imposed solely by the President of the ICTA⁷⁴⁸. Additionally,

⁷⁴⁴ Akdeniz and Güven, *Üst Düzey Kamu Şahsiyetlerinin İncinen İtibarı, Onur ve Haysiyet Yılı*, 37-38.

⁷⁴⁵ “Free Web Turkey, *Haberin Sonu*, 10.

⁷⁴⁶ “Hülya Kılınç, Murat Ağirel and Barış Pehlivan Sent to Jail Again,” *Bianet*, February 15, 2022, <https://m.bianet.org/english/law/257752-hulya-kilinc-murat-agirel-and-baris-pehlivan-sent-to-jail-again>.

⁷⁴⁷ “Three-year Prison Sentence Sought for Turkish News Anchor Fatih Portakal over Tweet,” *Duvar English*, May 1, 2020, <https://www.duvarenglish.com/media/2020/05/01/three-year-prison-sentence-sought-for-turkish-news-anchor-fatih-portakal-over-tweet>.

⁷⁴⁸ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, additional art. 4/20. “(20) (Added: 13/10/2022-7418/34 art.)

under the new amendments, social media platforms must share content and information on the content's creator with law enforcement authorities if they discover content that endangers individuals' lives or property and if a delay causes an undue burden⁷⁴⁹.

One significant issue that has arisen with the 2020 amendments is the introduction of the "right to be forgotten" into the law for the first time, as mentioned above. This new sanction allows individuals whose personal rights have been violated to request that their name not be associated with specific internet addresses⁷⁵⁰. Since its introduction on July 29, 2020, judges have imposed it in 70 separate decisions through the end of 2021⁷⁵¹. It is crucial to ensure that politicians and public officials do not abuse this right to hide their corruption, but unfortunately, it is frequently invoked by the government and public officials. For example, in April 2020, access to news regarding rented land by a high-ranking official was blocked, as well as articles reporting on unlicensed construction activities⁷⁵². Another example is the news about a cult leader molesting a child, which was also blocked⁷⁵³. This content removal measure results in increased restrictions on freedom of expression and press, emphasizing the need for requests to remove content to consider public interest, especially news on public officials involved in corruption cases. However, the right to be forgotten should not be used for those who commit heinous crimes like rape, animal cruelty, and sexual offenses against children, as it puts other members of society in danger. Independent courts must carefully weigh the public interest, freedom of the press, and privacy concerns on a case-by-case basis. However, it is feared that this law could be exploited to suppress news and other content, such as government criticism, instead of upholding individuals' right to privacy.

The President may impose an administrative penalty of up to three percent of its global turnover in the previous calendar year on the social network provider that does not fulfill its obligations in the sixth, seventh, thirteenth, sixteenth, eighteenth and nineteenth paragraphs of this article. A fine may be imposed.”; Given the lack of judicial oversight over the authority's decisions and the institution's lack of independence, the broad new powers granted to the ICTA, and its president are especially worrisome. The Authority, which operates under the Ministry of Transportation, is nominally independent, but President Erdoğan appoints its president and members.

⁷⁴⁹ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, additional art. 4/16. “(16) (Added: 13/10/2022-7418/34 art.) If the social network provider learns about content that endangers the safety of people's lives and property and if there is any harm in delaying it, it shares this content and the information about the creator of the content with the authorized law enforcement units.”

⁷⁵⁰ Law on the Regulation of Broadcasts on the Internet and Combating Crimes Committed through Broadcasts additional no. 5651, May 23, 2007, art. 9/10. See fn. 733.

⁷⁵¹ Akdeniz and Güven, *Üst Düzey Kamu Şahsiyetlerinin İncinen İtibarı, Onur ve Haysiyet Yılı*, 83.

⁷⁵² “Fahrettin Altun'un Boğazda Kiraladığı Arazinin Haberine Erişim Engeli,” *BirGün*, April 20, 2020, <https://www.birgun.net/haber/fahrettin-altun-un-bogazda-kiraladigi-arazinin-haberine-erisim-engeli-297372>.

⁷⁵³ “Court Blocks Access to ‘All Future Reports’ about Islamic Cult Leader’s Child Abuse,” *Bianet English*, September 4, 2020, <https://bianet.org/5/112/230262-court-blocks-access-to-all-future-reports-about-islamic-cult-leader-s-child-abuse>.

Meanwhile, it is worth noting the Constitutional Court's ruling regarding Article 9 of Law No. 5651 prior to the 2020 amendment. In its 2021 decision on the Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others Application, the Constitutional Court identified structural problems with Article 9 of Law No. 5651 and implemented the pilot judgment procedure. Despite Article 9's legitimate purpose of protecting personal rights, the rule lacks guidance on how criminal judges of peace should exercise their authority⁷⁵⁴. Moreover, the current rule and structure do not adequately “*prevent arbitrary and disproportionate interventions*,” and indefinite blocking is a severe measure. To address these problems⁷⁵⁵, the Constitutional Court notified the Grand National Assembly of Turkey and postponed examination of all related applications for a year from the decision's publication in the Official Gazette⁷⁵⁶. However, the pilot decision has not had any discernible impact on censorship practices, which continue to escalate.

4.1.3.2 Publicly Disseminating Misleading Information

On October 13, 2022, the Turkish Penal Code included the offense of “publicly disseminating misleading information⁷⁵⁷”. The article stipulates that individuals who publicly spread “false information” related to the country's internal and external security, public order, and public health with the intent of causing public anxiety, fear, or panic in a manner that can disrupt public peace, will be subject to imprisonment for one to three years. If the offender conceals their identity or commits the offense as part of an organization's activities, the penalty will be doubled. However, this ambiguous language of the law may put millions of internet users in Turkey at risk of criminal prosecution for sharing information that the government does not accept. Precision in language is essential for legal certainty, which is a fundamental principle of the rule of law. The imprecise language used in this article results in a lack of legal certainty and violates the rule of law. Furthermore, the 50 percent increase in penalties for publishing information

⁷⁵⁴ Turkish Constitutional Court, Keskin Kalem Yayıncılık ve Ticaret A.Ş. ve Diğerleri, 2018/14884, October 27, 2021, para. 131.

⁷⁵⁵ Turkish Constitutional Court, Keskin Kalem Yayıncılık ve Ticaret A.Ş. ve Diğerleri, 2018/14884, October 27, 2021, para. 132.

⁷⁵⁶ Turkish Constitutional Court, Keskin Kalem Yayıncılık ve Ticaret A.Ş. ve Diğerleri, 2018/14884, October 27, 2021, para. 160.

⁷⁵⁷ Turkish Penal Code no. 5237, October 12, 2004, art. 217/A. “(Added:13/10/2022-7418/29 art.)

(1) Anyone who publicly disseminates untrue information about the internal and external security, public order and general health of the country, with the sole intention of creating anxiety, fear or panic among the public, in a way that is conducive to disturbing public peace, shall be sentenced to imprisonment from one to three years.

(2) If the perpetrator commits the crime by hiding his true identity or within the framework of the activities of an organization, the penalty imposed in accordance with the first paragraph is increased by half.”

from anonymous user accounts could undermine internet anonymity and intimidate those who wish to expose wrongdoing but fear public exposure⁷⁵⁸. It is worth noting that anonymity is crucial to the free flow of ideas on the Internet, as recognized by the ECtHR⁷⁵⁹.

The article undermines freedom of expression and effectively eliminates the right to criticize and dissent. Although it may appear to serve the public interest, its true aim is to stifle open and realistic discussions of government policies and prevent the public from being informed. The article has the potential to sway the election outcomes by withholding vital information from voters about the policies being pursued⁷⁶⁰. As a result, the CHP has taken action by filing a petition with the Constitutional Court seeking to have the article declared unconstitutional on the grounds that it aims to silence the opposition, media, and social media. However, the Court declared that the article is not unconstitutional⁷⁶¹.

The article's impact has already been felt, with the first use of the provision being against Kılıçdaroğlu. The General Directorate of Security demanded legal action against Kılıçdaroğlu for "publicly disseminating misleading information" after he accused the government of financing Turkey's current account deficit with billions of dollars in drug money. Kılıçdaroğlu was also charged with "insulting," "slandering," and "demeaning the Turkish nation, the State of the Republic of Turkey, and the institutions and organs of the State"⁷⁶². While the investigation is ongoing, it is worth noting that the Joint Commission of the Turkish Parliament discussed a request to revoke Kılıçdaroğlu's immunity in connection with other files⁷⁶³.

Furthermore, in relation to the aforementioned obligations imposed on social media platforms, if a person disseminates misleading information to the public through social media platforms, they must provide the authorities with that person's personal information within the scope of an investigation or prosecution. Failure to comply with this obligation may result in a bandwidth-narrowing penalty, which entails blocking

⁷⁵⁸ "Turkey: Scrap the 'Disinformation Bill' and Stop Digital Censorship," *Article 19*, June 8, 2022, <https://www.article19.org/resources/turkey-scrap-the-disinformation-bill-and-stop-digital-censorship/>.

⁷⁵⁹ ECtHR, *Delfi AS v. Estonia*, Appl. No. 64569/09, June 16, 2015, para. 147.

⁷⁶⁰ "Dezenformasyon Yasası Hukuk Devletine Aykırıdır," *Politik Yol*, June 22, 2022, <https://www.politikyol.com/dezenformasyon-yasasi-hukuk-devletine-aykiridir/>.

⁷⁶¹ Turkish Constitutional Court, E. 2022/129 K. 2023/189, November 9, 2023.

⁷⁶² "Sansür Yasası Sonrası 29. Maddeden İlk Dava Talebi Kılıçdaroğlu'na," *Evrensel*, November 3, 2022, <https://www.evrensel.net/haber/473842/sansur-yasasi-sonrasi-29-maddeden-ilk-dava-talebi-kilicdarogluna>.

⁷⁶³ Ayşe Sayın, "Kemal Kılıçdaroğlu dahil 10 Milletvekilinin Dokunulmazlık Fezlekeleri Meclis'e Gönderildi; CHP Lideri 'Hodri Meydan' Dedi," *BBC*, April 14, 2021, <https://www.bbc.com/turkce/haberler-turkiye-56747512>.

access to the offending social media platform. It is also noteworthy that the Presidential Communications Directorate established a “Center for Combating Disinformation”, which publishes a weekly disinformation bulletin to rectify what the government deems as false news⁷⁶⁴. As an example, the bulletin claims that news reports about the lack of precautions and inspections after the mining accident in Bartın were disinformation and sparked considerable controversy. It remains to be seen whether the dissemination of what the bulletin characterizes as fake news will constitute the crime of “public dissemination of misleading information” or whether the courts will rule on the concept of misleading information based on this bulletin. The aforementioned amendments to social media regulations in Turkey seem like a concerning development, signaling an escalation in the crackdown on journalists and censorship of online and social media criticism⁷⁶⁵. According to the OSCE report on the May 2023 elections, in 2023, at least 10 journalists were prosecuted for criticizing the government’s response to the earthquake. The prosecutor’s office continued its crackdown, prosecuting at least eight journalists during the election period, mostly for criticizing the government. Adding to this trend, on May 24, the İstanbul Public Prosecutor initiated an investigation against 34 individuals for allegedly disseminating misleading information concerning the May 14 election results⁷⁶⁶.

4.2 Policies to Affecting Dissent

4.2.1 Challenges on Press

4.2.1.1 Regulations on Press Cards

Press cards have traditionally been essential tools for journalists to access news environments and report the news. However, in recent years, press cards have become a practical tool for government pressure. The authority to issue press cards was transferred from the Prime Ministry to the Presidential Communications Directorate in 2018, resulting in the cancellation or non-renewal of 2,500 press cards⁷⁶⁷. Within the five years following the amendment, 1371 journalist press cards were not renewed, and 1238 were revoked. The prolonged evaluation periods for numerous press card applications further exacerbate the situation. Additionally, the Presidency of the Republic frequently uses

⁷⁶⁴ “Dezenformasyon Bülteni,” *Türkiye Cumhuriyeti Cumhurbaşkanlığı İletişim Başkanlığı*, <https://www.iletisim.gov.tr/turkce/dezenformasyon-bulteni>.

⁷⁶⁵ Nazlan Ertan, “Turkey’s Independent Journalists Stand Against So-called Disinformation Bill,” *Al-Monitor*, June 6, 2022, <https://www.al-monitor.com/originals/2022/06/turkeys-independent-journalists-stand-against-so-called-disinformation-bill#ixzz7cWaaJ7Ex>.

⁷⁶⁶ OSCE, *Republic of Türkiye, General Elections 14 May, 20*, fn. 100.

⁷⁶⁷ Hikmet Adal, “Journalist Nadire Mater Reclaims Press Card After Four Years,” *Bianet English*, August 25, 2022, <https://bianet.org/5/110/266323-journalist-nadire-mater-reclaims-press-card-after-four-years>.

press cards as accreditation requirements for journalists to cover official institution activities. This, in turn, contributes to turning them into an informal measure of journalistic legitimacy by law enforcement officials. As a result, journalists without press cards find it difficult to gain access to news⁷⁶⁸. One of the most significant restrictions on the press card rights of journalists who work for the public's right to receive news and learn the truth is the absence of a contract under the Press Labor Law. Many journalists who should be covered by the Press Labor Law are forced to contract under Labor Law No. 4857, which violates their rights⁷⁶⁹. As a result, journalists without press cards face difficulties obtaining accreditation, which puts them at a disadvantage in the race for news coverage⁷⁷⁰. As of October 13, 2022, the Press Law has been updated with new regulations regarding press card holders who violate the principles of press ethics. In such cases, the Press Card Commission has the discretion to either issue a warning to the holder or revoke their press card, depending on the nature of the violation⁷⁷¹. Immediately afterward, it is worth noting that newspapers affiliated with associations and representatives of professional organizations that criticized the law were fined⁷⁷². In conclusion, increasing use of press cards as a tool for government pressure has become a growing concern for journalists seeking to access news environments and report the news.

4.2.1.2 Ineligibility for Parole

The government's response to the COVID-19 pandemic included passing the Law on Amendments to the Law on Execution of Sentences and Security Measures and Other Laws⁷⁷³, resulting in the release of around 90,000 prisoners. However, the exemption of journalists from the execution regulation has led to significant public concern. Despite facing a high risk of infection, dozens of journalists remain detained despite their indictments containing no evidence other than their news reports and social media posts.

⁷⁶⁸ Tirşe Erbaysal Filibeli, Can Ertuna and Yağmur Çenberli, "Türkiye'de Medya ve Demokrasi: Medyada Çoğulculuğu İzleme Raporu Üzerine Bir Analiz," *Galatasaray Üniversitesi Journal of Communication* 37 (2022): 147.

⁷⁶⁹ "TGC: Ekonomik Kriz Gazetecileri de Vurdu," *Türkiye Gazeteciler Cemiyeti*, December 28, 2021, <https://www.tgc.org.tr/aciklamalar/3147-tgc-eko-%20nomik-kriz-gazetecileri-de-vurdu.html>.

⁷⁷⁰ Erbaysal Filibeli, Ertuna and Çenberli, "Türkiye'de Medya ve Demokrasi," 147.

⁷⁷¹ Press Law no. 5187, June 26, 2004, additional art. 6. "(Added:13/10/2022-7418/15 art.)

If it is understood that the press card holder does not have the qualifications specified in additional article 3 or has subsequently lost these qualifications, the press card will be canceled by the Presidency.

If the press card holder acts contrary to the principles of press ethics determined in accordance with Article 49 of the Law on the Establishment of the Press-Advertising Institution dated 2/1/1961 and numbered 195, the Commission may warn the press card holder or decide to cancel the press card, taking into account the nature of the violation. can be given. The procedures and principles regarding this are determined by the regulation."

⁷⁷² *Gazeteciler Cemiyeti, İfade ve basın Özgürlüğü 2022 Yılı Raporu* (2022), 10.

⁷⁷³ Law on the Amendment of the Law on the Execution of Penalties and Security Measures and Some Other Laws no. 7242, April 15, 2020.

Under the law prior to the amendments, prisoners were eligible for release after serving two-thirds of their sentences, but the new amendments allow for parole after serving only half of the sentence⁷⁷⁴. Exceptions include individuals convicted of certain offenses, such as terrorism-related ones, and the law does not apply to pre-trial detainees or those whose convictions are under appeal.

Even though pre-trial detention should only be used in exceptional circumstances under international human rights law, in Turkey, however, pre-trial detention is frequently and punitively used against individuals who express dissenting views, including journalists, political opposition activists, lawyers, and human rights defenders, with many being held for extended periods without trial.

The CHP filed a petition with the Constitutional Court seeking to overturn certain provisions of the law. According to the CHP, prisoners who are denied privileges like parole are typically those who exercise their freedom of expression. In Turkey, the definition of terrorism has been politicized, and the words, thoughts, and writings of nonviolent dissidents are included in this definition. It is crucial to recognize the intent to suppress opposition by punishing actions protected under the right to free expression, and these offenses should be taken into account in the new execution rules⁷⁷⁵.

However, the Constitutional Court rejected the CHP's request for annulment, stating that the issues raised pertained to the interpretation and application of Law No. 3713, which was not relevant to the case before them. The Court concluded that the alleged issues fell under the purview of expediency and were not subject to constitutional review⁷⁷⁶.

4.2.1.3 Punitive Policies of RTÜK and BİK

One of the major impediments to press freedom in Turkey is the relationship between media ownership and government, which is reinforced by regulatory and supervisory institutions. For instance, the Press Advertising Agency (*Basın İlan Kurumu*, BİK) and the Radio and Television Supreme Council (*Radyo ve Televizyon Üst Kurulu*, RTÜK) have the power to impose sanctions such as broadcast bans, fines, and advertisement penalties. Furthermore, they can support organizations that refrain from criticizing the government by directing official advertisements to them.

⁷⁷⁴ Law on the Execution of Penalties and Security Measures no. 5275, December 29, 2004, art. 107.

⁷⁷⁵ Turkish Constitutional Court, E. 2020/53 K. 2021/55, July 14, 2021, para. 168.

⁷⁷⁶ Turkish Constitutional Court, E. 2020/53 K. 2021/55, July 14, 2021, para. 191.

According to Article 35 of Law No. 6112, the RTÜK consists of nine representatives elected from political parties in proportion to their representation in the Grand National Assembly of Turkey⁷⁷⁷. As a result, the absolute majority of decisions are determined by the votes of the representatives of the ruling alliance.

RTÜK's actions in 2021 and 2022 highlight differences of media outlets that challenge the government's narrative. During this period, opposition channels received 125 administrative fines, amounting to a staggering 38,835,000 Turkish Liras. In contrast, government-affiliated channels were fined only four times in 2022 and not at all in 2021⁷⁷⁸. For instance, RTÜK penalized Tele1, KRT, Flash, and Halk TV for broadcasting statements by the then-CHP Chairperson, in which allegations were made about financial transfers involving the President and his family⁷⁷⁹. This suggests that merely airing the statements of opposition parties can potentially trigger administrative penalties. Similarly, RTÜK fined the same four channels for reporting on statements by the then-CHP Group Vice Chairperson and currently the leader of the party, Özgür Özel and Ahmet Şık, İstanbul deputy of the TİP, following the Gezi Trial⁷⁸⁰.

Advertising is the primary source of revenue for print media, which faces difficulties due to the rising cost of imported inputs. Established in 1961, the BİK is the institution responsible for the distribution of public advertisements in Turkey⁷⁸¹. The BİK was also established to enable the print media to gather, disseminate, and disclose news independently from political powers.

⁷⁷⁷ Law on the Establishment and Broadcasting Services of Radio and Television Stations no. 6112, March 3, 2011, art. 35/1, 2. "(1) The Supreme Council is composed of individuals who have received at least four years of higher education, who have worked in public institutions and organizations or private organizations for at least ten years in matters related to their profession, who have sufficient professional knowledge, experience and the qualifications to be a civil servant, and who are over the age of thirty. It consists of nine members elected by the Turkish Grand National Assembly.

(2) For the election, candidates are nominated twice as many as the number of members to be determined in proportion to the number of members of the political party groups, and the members of the Supreme Council are elected by the General Assembly of the Grand National Assembly of Turkey from among these candidates, based on the number of members in each political party group. However, political party groups cannot discuss or make decisions regarding who will vote for in the elections to be held in the Turkish Grand National Assembly."

⁷⁷⁸ Expression Interrupted, "Freedom of Expression and Press Agenda" (October-November-December 2022) <https://www.expressioninterrupted.com/uploader/uploader/freedom-of-expression-and-the-press-agenda-2022-4>; Expression Interrupted, "Freedom of Expression and Press Agenda" (October-November-December 2021) <https://www.expressioninterrupted.com/uploader/uploader/freedom-of-expression-and-the-press-agenda-2021-4>.

⁷⁷⁹ "RTÜK'ten Dört Kanala "Kılıçdaroğlu" Cezası," *DW*, May 30, 2022, <https://www.dw.com/tr/rtukten-kilicdaroğlunun-aciklamalarini-yayinlayan-dort-kanala-ceza/a-61974724>.

⁷⁸⁰ "RTÜK, Gezi Davası Açıklamalarını Yayınlayanlara Ceza Hazırlığında," *Sendika.org*, May 10, 2022, <https://sendika.org/2022/05/rtuk-gezi-davasi-aciklamalarini-yayimlayanlara-ceza-hazirliginda-655448/>.

⁷⁸¹ Gül Karagöz Kızılca and Fikret Kemal Kızılca, "Basın İlan Kurumu ve 2017-2021 Arasında Basına Verilen İlan Durdurma Cezaları," *Galatasaray Üniversitesi İletişim Dergisi* 36 (2022): 9. 10.16878/gsuilet.1073008.

However, with the transition to a presidential system in 2018, the BİK underwent changes, including the appointment of the BİK representatives by the president and the affiliation of the BİK with the Presidential Communications Directorate. The extension of the Directorate's oversight to include the BİK has increasingly aligned the agency's actions with government priorities.⁷⁸² In their article examining the penalties imposed by the BİK between 2017 and 2021, Kızılca and Kızılca note that the number of penalties imposed has increased significantly since the change in the BİK Board of Directors on September 9, 2019⁷⁸³.

This increase has been primarily affected newspapers that are not aligned with the partisan media and are not close to political power. 76 percent of the fines in 2019 and 45 percent of the fines in 2020 were imposed only on the opposition newspapers Cumhuriyet, Evrensel, and BirGün⁷⁸⁴. Kızılca and Kızılca reached three conclusions when they evaluated the data they utilized from the BİK meetings.

First, there was a sharp increase in the fines imposed on newspapers after the September 2019 change in the BİK Board of Directors following the affiliation of BİK with the Presidential Communications Directorate. According to the findings of this study, 30.25 penalties were imposed per meeting in the 32 meetings held until the end of 2020 after the board change, while the average penalty in the 32 meetings held before the change was only 4.7. The increase in fines suggests that the new board was elected with a new job description that involves heightened regulatory oversight in the press. In fact, this increase may be attributed to the fact that the BİK's organizational structure supports certain press interventions which facilitate alignment with political objectives. The second result is that the weight of press ethics penalties in total increased, especially in the 2020 meetings. It is noteworthy that all the penalties imposed during 12 consecutive meetings were press ethics penalties. It is possible that the new administration tried to intervene in the press with a different emphasis on morality than the previous one. The third conclusion is that the increase in fines is not due to an equal intervention in the press

⁷⁸² Meltem Akyol, "Muhaliif Gazetelere Mali Kiskacin Sopasi: Basın İlan Kurumu," *Expression Interrupted*, May 31, 2021, <https://expressioninterrupted.com/tr/muhaliif-gazetelere-mali-kiskacin-sopasi-basin-ilan-kurumu/>; Aykut Küçükkaya, "Cumhuriyet'e 74 Günlük Resmi İlan Cezası," *Cumhuriyet*, September 27, 2021, <https://www.cumhuriyet.com.tr/turkiye/cumhuriyete-74-gunluk-resmi-ilan-cezasi-1872111>.

⁷⁸³ Karagöz Kızılca and Kızılca, "Basın İlan Kurumu ve 2017-2021 Arasında Basına Verilen İlan Durdurma Cezaları," p. 22.

⁷⁸⁴ Karagöz Kızılca and Kızılca, "Basın İlan Kurumu ve 2017-2021 Arasında Basına Verilen İlan Durdurma Cezaları," 24.

in general but rather to the fines imposed on three newspapers in particular (Birgün, Cumhuriyet, and Evrensel)⁷⁸⁵.

On February 1, 2023, the BİK introduced the Press Announcement and Advertising Regulation, which states that if a criminal case is initiated against the owner, partner, reporter, or writer of a periodical, they will be suspended from publishing official advertisements if the charges relate to crimes under the “Crimes Against the Constitutional Order” section or crimes under the “Anti-Terrorism Law”. It is important to note that this suspension applies even if the case is still ongoing and does not require a conviction. This rule is widely viewed as a measure likely to suppress the opposition press in Turkey, where journalists are frequently charged with terrorism-related offenses.

As evident from past instances, the strategies employed by RTÜK and BİK appear to function as mechanism that limit dissenting voices. These organizations appear to be used to reshape the media landscape in a way that aligns with and reinforces the prevailing narrative and priorities, or to potentially to accelerate ongoing changes.

4.2.2 Challenges to the Academic Freedom

Academic freedom has been consistently limited in Turkey, a country that has experienced frequent military coups. The state of emergency that followed the most recent coup attempt in 2016 has further eroded academic freedom in Turkey, and its impacts continue to be felt today, as evidenced by the emergence of hyper-presidentialism in the country’s political landscape.

As mentioned above, the YÖK serves as the regulatory body for higher education in Turkey. However, its origins are rooted in less-than-ideal circumstances, as it was established in 1981 after the military coup of 1980. The YÖK is composed of a total of twenty-one members, with seven elected by the president, who prioritizes professors with successful experience as rectors and professors; seven selected from prominent senior civil servants or retired civil servants; and the remaining seven elected by the Inter-University Council from among professors who are not members of the Council. These members are then appointed by the president⁷⁸⁶. However, appointing individuals with

⁷⁸⁵ Karagöz Kızılca and Kızılca, “Basın İlan Kurumu ve 2017-2021 Arasında Basına Verilen İlan Durdurma Cezaları,” 24-25.

⁷⁸⁶ Higher Education Law no. 2547, November 6, 1981, art. 6/b. “b. Council of Higher Education; (1) (Amended: 2/7/2018 – Decree-Law-703/135 art.) By the President; seven selected by giving priority to professors who have successfully served as rectors and faculty members, seven selected from among distinguished high-level government officials or retirees, (2) (Repealed: 2/7/2018 – Decree-Law-703/135 art.) (3) (Repealed: 14/7/2004 – 5218/2 art.)

political affiliations closer to the president over those with academic is a common practice⁷⁸⁷. Additionally, the YÖK, despite being the regulatory body for higher education, has been reduced to a mere symbolic institution due to the emergence of hyper-presidentialism. Consequently, academia is now governed by presidential decrees.

Before moving on to the oppression that developed with hyper-presidentialism, it is crucial to acknowledge the Academics for Peace initiative and the persecution they faced even before the 2016 coup attempt. This group of 2,200 academics signed a petition raising concerns about state actions in Kurdish-majority cities in Turkey and calling for the peace process to resume⁷⁸⁸. In response, these academics were labeled as “so-called intellectuals” and “pseudo academics” by the President, and the YÖK denied any relation between this petition and academic freedom while directing universities to take action against the signatories. As a result of this statement, many academics for peace faced disciplinary investigations, resignations, or dismissals⁷⁸⁹.

In addition, many Academics for Peace signatories were indicted on nearly identical charges of “making propaganda for a terrorist organization” under Article 7/2 of Turkey’s Anti-Terror Law⁷⁹⁰. Despite some of the academics being cleared of charges, the State of Emergency Commission, responsible for investigating cases of those dismissed from public service during the emergency, has failed to reinstate any of the academics for peace, and some have not had their passports returned⁷⁹¹. Additionally, reports indicate that several academics faced physical and verbal abuse, with pro-government media launching campaigns critical of the signatories. Furthermore, some television stations, newspapers, and ultra-nationalist organizations have shared the names, links, pictures, and addresses of the signatories on social media⁷⁹². The trial of the Academics for Peace signatories took a pivotal turn when the Constitutional Court, with a nine-to-eight vote, declared that the conviction of ten academics for supporting the declaration was a violation of their right to freedom of expression. The court directed the lower courts to conduct retrials and ordered the defendants to pay 9,000 Turkish Liras in

(4) (Cancelled: By the Decision of the Constitutional Court dated 14/5/1997 and numbered E.: 1997/21, K.: 1997/48.)

(5) It consists of a total of twenty-one people, seven of whom are selected by the Interuniversity Board from professors who are not members of the Board and appointed by the President.”

⁷⁸⁷ Olga Selin Hünler, “Academic Freedom in Turkey,” in *University Autonomy Decline: Causes, Responses, and Implications for Academic Freedom*, eds. Kirsten Roberts Lyster, Ilyas Saliba, and Janika Spannagel (Oxford: Routledge, 2023), 150.

⁷⁸⁸ “Hakkımızda/About Us,” *Barış İçin Akademisyenler*, <https://barisicinakademisyenler.net/node/1>.

⁷⁸⁹ Human Rights Foundation of Turkey, *Academics for Peace: A Brief History* (March 2019), 5.

⁷⁹⁰ Scholars at Risk, *Free to Think 2018: Reports of the Scholars at Risk Academic Freedom Monitoring Project* (2018), 31.

⁷⁹¹ Hünler, “Academic Freedom in Turkey,” 154.

⁷⁹² Hünler, “Academic Freedom in Turkey,” 156.

damages⁷⁹³. Although the Constitutional Court's decision was a significant victory, it did not alleviate the climate of fear in academia. Beyond the impact on Academics for Peace, the chilling effect has been felt by a significant number of scholars. The repression of academic freedom, along with the state of emergency, has caused anxiety among academics working on politically sensitive issues, leading them to avoid conducting research on these topics.

During this era of hyper-presidentialism, academic freedom and university autonomy have been considerably restricted in Turkey. In universities, it has become common practice for senior administrators to advise professors against discussing sensitive political topics in lectures, or for students to file complaints with CİMER⁷⁹⁴ (Presidential Communication Center) about professors who criticize the government. Consequently, professors often resort to self-censorship, hesitant to teach without fear of repercussions. The YÖK and university administrations have not provided a list of prohibited topics, yet sporadic and arbitrary sanctions have increased the fear of persecution among academics and students. As a result, they frequently self-censor their academic expression when addressing politically charged issues⁷⁹⁵. This climate of repression has not only affected political discourse but also public health research, as exemplified by Dr. Bülent Şık who was prosecuted for sharing the findings of a Ministry of Health study on cancer rates and industrial pollution with the public. Dr. Şık was convicted of “disclosing information related to his duty” and sentenced to one year and three months in prison, but was acquitted by the 13th Criminal Chamber of the İstanbul Regional Court of Appeals. However, the public prosecutor appealed the verdict to the Court of Cassation prolonging the legal battle⁷⁹⁶. The negative impact of hyper-presidentialism extends to the appointment of rectors. In 2018, a presidential decree⁷⁹⁷ removed the YÖK from the rector appointment process and gave the President sole authority over these appointments. As a result, rectors directly appointed by the president

⁷⁹³ Turkish Constitutional Court, Zübeyde Füsün Üstel ve Diğerleri, 2018/17635, July 26, 2019.

⁷⁹⁴ The Presidential Communication Center in Turkey (abbreviated as CİMER) was established in 2015 as part of the AKP's efforts to assist citizens in communicating their “problems, complaints, and demands” to the presidency; Arzu Geybullayeva, “CIMER: a revolutionary platform or reporting tool in the hands of state sympathizers?” *Global Voices*, September 13, 2022, <https://globalvoices.org/2022/09/13/cimer-a-revolutionary-platform-or-reporting-tool-in-the-hands-of-state-sympathizers/>.

⁷⁹⁵ Hünler, “Academic Freedom in Turkey,” 157.

⁷⁹⁶ Evrim Kepenek, “Prosecutor's Office Appeals Acquittal of Bülent Şık: ‘May the Children of the Country Be Well!’” *Bianet English*, May 5, 2022, <https://m.bianet.org/bianet/freedom-of-expression/243615-prosecutor-s-office-appeals-acquittal-of-bulent-sik-may-the-children-of-the-country-be-well>.

⁷⁹⁷ Higher Education Law no. 2547, November 6, 1981, art. 13/a. “a) (Amended paragraph: 2/7/2018 – Decree-Law-703/135 art.) The rector of state and foundation universities is appointed by the President. In universities established by foundations, the appointment of rectors is made upon the proposal of the board of trustees. The rector represents the legal entity of the university or high technology institute.”

have taken on a more restrictive role in limiting student dissent and critical academic research. The Scholars at Risk report reveals that rectors have become more systematic and aggressive in their response to criticism. For instance, rectors and university senates did not hesitate to issue harsh condemnations of the Constitutional Court in response to its ruling in July 2019 recognizing the Peace Petition as a legitimate expression of freedom of expression⁷⁹⁸. One notable example was the appointment of a politician as rector of Boğaziçi University, which sparked widespread protests from students and faculty members who claimed that it undermined university autonomy and academic freedom. These protests, which began in January 2021, led to the arrest and detention of numerous students, raids on student houses, and fights between security guards and students⁷⁹⁹. Although the initial appointee was dismissed and a new acting rector was appointed, protests reignited⁸⁰⁰, and a faculty member who supported the protests faced termination of his contract, which an administrative court later annulled as unlawful. It was stated that the reason for this termination was the result of a disciplinary investigation carried out due to his statements criticizing the university⁸⁰¹. In addition, in 2022, the YÖK dismissed three deans who participated in protests against the presidential appointment⁸⁰².

Furthermore, in Turkey, students who express their opinions on a range of issues, such as affordable student housing, university autonomy, and LGBTQ+ rights, have repeatedly faced police repression⁸⁰³. One particularly egregious example occurred during the 2019 Middle East Technical University (METU) Pride March, when police

⁷⁹⁸ Human Rights Foundation of Turkey, “Kuşatma Altındaki Üniversiteler: Türkiye’nin Akademik Topluluğu Felç Geçiriyor,” *Scholars at Risk*, <https://www.scholarsatrisk.org/wp-content/uploads/2020/12/SAR-Free-to-Think-2020-Turkey.pdf>.

⁷⁹⁹ “Boğaziçi University Academics Protest Erdoğan’s Rector Appointment as Police Flood Campus,” *Duvar English*, January 5, 2021, <https://www.duvarenglish.com/bogazici-university-academics-protest-erdogans-rector-appointment-as-police-flood-campus-news-55736>; “Boğaziçi Üniversitesi’ne Kelepçe Takılması Tepki Çekti,” *BirGün*, January 4, 2021, <https://www.birgun.net/haber/bogazici-universitesi-ne-kelepce-takilmasi-tepki-cekti-329106>.

⁸⁰⁰ “Fresh Protests at Boğaziçi University as Erdoğan Appoints New Rector,” *Bianet English*, August 24, 2021, <https://m.bianet.org/english/education/249201-fresh-protests-at-bogazici-university-as-erdogan-appoints-new-rector>.

⁸⁰¹ “Mahkeme Kararına Rağmen: Can Candan’ın Boğaziçi’yle İlişği Kesildi,” *Diken*, August 10, 2022, <https://www.diken.com.tr/mahkeme-kararina-ragmen-can-candanin-bogaziciyle-ilisigi-kesildi/>.

⁸⁰² “Boğaziçi University: Three Deans Removed from Office,” *Bianet English*, January 20, 2022, <https://bianet.org/english/education/256505-bogazici-university-three-deans-removed-from-office>.

⁸⁰³ “The Police Attacks 9th Pride Parade at Boğaziçi University,” *Unikuir*, May 20, 2022, <https://www.unikuir.org/haberler/the-police-attacks-9th-pride-parade-at-bogazici-university-20-05-2022>; “Nine Detained in Student Housing Protests,” *Bianet English*, September 21, 2021, <https://bianet.org/haber/nine-detained-in-student-housing-protests-in-ankara-250612>; “6 University Students Spending Night in Turkish Park to Protest High Housing Prices Detained,” *Turkish Minute*, September 23, 2021, <https://www.turkishminute.com/2021/09/23/6-university-students-spending-night-in-turkish-park-to-protest-high-housing-prices-detained/>; Nazlan Ertan, “Turkish Students Continue Protests Despite Arrests, Erdoğan’s Accusations,” *Al-Monitor*, September 30, 2021, <https://www.al-monitor.com/originals/2021/09/turkish-students-continue-protests-despite-arrests-erdogans-accusations>.

used pepper spray on peaceful demonstrators and detained 25 individuals. The rector of METU had previously declared that the annual campus Pride march would not be allowed, and police then informed students planning the march that they could not display rainbow flags, sit on the grass, or stand under tents. Despite these restrictions, students attempted to read their statement, but the police intervened by using pepper spray on the group and arresting 24 students and a professor⁸⁰⁴. Unfortunately, this is just one of many similar instances of police repression against students in Turkey.

In addition, creating a loyal academy in Turkey requires not only intensive censorship but also the denial of academic recognition to those who express critical views. The Human Rights Foundation of Turkey has received reports that illustrate the extent of censorship in academic research and discourse. For instance, Güllistan Yarkın, a Kurdish scholar who obtained her PhD in sociology from the State University of New York at Binghamton (SUNY Binghamton), was denied the equivalent doctoral degree by the Inter-University Board, which is the sole authority in Turkey to grant such equivalency. The board claimed that Yarkın's dissertation, which depicted the Kurdish question as an example of colonialism and characterized Kurds as a colonized people, violated Turkey's anti-terror law. Phrases such as "modern Turkish colonialism," "massacres and atrocities against non-Muslims," and "the Armenian genocide" were cited to justify the decision, revealing that expressions and academic approaches that challenge state-controlled discourse are prohibited in Turkey⁸⁰⁵. Similarly, Mehmet Baki Deniz, who earned his PhD from SUNY Binghamton, was denied recognition of his doctorate, titled "Who Rules Turkey Between 1980 and 2008? Business Power and the Rise of Authoritarian Populism," without any explanation other than the content and subject matter of his thesis⁸⁰⁶. The denial of the title of doctor to scholars who engage in critical studies constitutes a form of censorship that bars them from working in Turkey. Under hyper-presidentialism, the independence of academic institutions has been eroded, and they operate under the presidential control to silence opposition.

In conclusion, Turkey's Academic Freedom Index (AFI) status is now in Status E, which places it in the bottom 10 percent of all nations, according to the latest

⁸⁰⁴ Human Rights Foundation of Turkey, "Kuşatma Altındaki Üniversiteler", 29.

⁸⁰⁵ Güllistan Yarkın, "Türkiye Üniversite Sisteminde Kürt Çalışmalarının Sınırları: Doktora Diplomamın Tanınmaması," *Kürd Araştırmaları*, February 18, 2022, ; Human Rights Foundation of Turkey, "Kuşatma Altındaki Üniversiteler".

⁸⁰⁶ T24, "'Türkiye'de Siyasi Otoriterleşme" Tespitli Tezi Yazar Akademisyenin Yargılanması İstendi", March 9, 2022, <https://t24.com.tr/haber/turkiye-de-siyasi-otoriterlesme-tespitli-tezi-yazan-akademisyenin-yargilanmasi-istendi,1019757>.

rankings⁸⁰⁷. The country is also among those whose AFI scores have declined by at least 0.15 points between 2015 and 2020⁸⁰⁸. This decline reflects a significant increase in academic pressure since the rise of hyper-presidentialism in Turkey. Regarding our study, the atmosphere of caution engendered by hyper-presidentialism has led to a limited number of critical academic studies on the newly implemented political system.

4.2.3 Challenges to Legal Practice

Amidst the growing influence of hyper-presidentialism in Turkey, lawyers who represent civil society and opposition figures in the legal system are facing greater restrictions and pressure. In such a context, the obligation of lawyers to defend their clients in custody or in court becomes even more crucial, as they must uphold the rule of law and protect human rights.

However, recent changes to the Attorneyship Law, which include regulations allowing for the establishment of multiple bar associations in large cities like Ankara, İstanbul, and İzmir and changes to the election process of bar association leaders, have sparked concerns about increasing constraints on the legal profession in Turkey. Reports of increasing prosecutions, intimidation, and harassment of lawyers have only exacerbated these concerns, highlighting the importance of protecting the independence of the legal profession and ensuring that lawyers can carry out their professional duties without fear of repercussions.

The regulations governing multiple bar associations in Turkey have had a significant impact on the right to dissent and criticize the government. In July 2020, the Turkish government amended the Attorneyship Law to introduce a multiple bar association system, a move that was submitted and approved by the ruling party and its ally. As per the amended Article 77, it requires a minimum of 2,000 attorneys to establish an additional bar association in provinces with over 5,000 attorneys. However, the rationale for this amendment, which the President had previously mentioned but not implemented, remains a subject of contention. Following the controversial remarks made by the President of Religious Affairs about LGBTQ+ individuals in a sermon in April 2020, the Ankara Bar Association issued a statement condemning the comments and calling for an investigation. However, instead of addressing the substance of the criticism, the Ankara Prosecutor's Office filed a criminal complaint against the bar association,

⁸⁰⁷ Katrin Kinzelbach et al., *Academic Freedom Index: Update 2024* (FAU Erlangen-Nürnberg and V-Dem Institute: 2024): 7. DOI: 10.25593/open-fau-405.

⁸⁰⁸ Katrin Kinzelbach et al., *Report: Free Universities: Putting the Academic Freedom Index into Action* (Global Public Policy Institute and Scholars at Risk Network: 2021), 15.

accusing it of insulting religious values and inciting hostility. In response, the President criticized the bar association for allegedly targeting religious values and in a subsequent speech in June, he criticized professional organizations like bar associations for concealing self-interest behind their ideology. He argued that these organizations needed a more democratic, pluralistic, and representative structure⁸⁰⁹, and soon after, a law proposal was submitted to the legislature to introduce a multiple bar association system⁸¹⁰.

Accordingly, the Turkish Attorneyship Law has been amended to allow for the establishment of multiple bar associations in each province⁸¹¹. The objective of the law is to diminish the influence of the bar associations located in prominent cities that openly scrutinize the government and take on an increasingly significant role in documenting cases of human rights abuses. However, this move has raised considerable objections from the bar associations⁸¹². Many lawyers and members of the public believe that this amendment, which was made without consultation and in haste, as a potential means to weaken the unified voice of lawyers advocating for the rule of law. The primary risk of the multiple bar association system is the potential for organizations to be formed based on political ideology, ethnicity, or religion. Such a development would further divide

⁸⁰⁹ Anadolu Agency, “Cumhurbaşkanı Erdoğan’dan ‘Çoklu Baro Sistemi Açıklaması,’” *Youtube*, June 29, 2020, <https://www.youtube.com/watch?v=YYWpqWCjNIQ>.

⁸¹⁰ Ayşe Sayın, “Baroların yapısında değişiklik teklifi Meclis’te,” *BBC News Türkçe*, June 30, 2020, <https://www.bbc.com/turkce/haberler-turkiye-53234240>.

⁸¹¹ Law on Attorneyship no. 1136, April 7, 1969, art. 77. “Article 77 – (Amended first paragraph: 2/5/2001 - 4667/47 art.) A bar association is established in every provincial center where there are at least thirty lawyers within its region. If the number of lawyers in established bar associations falls below thirty, the provision of the second paragraph shall apply. (Additional sentences: 11/7/2020-7249/15 art.) A bar association can be established with a minimum of two thousand lawyers in provinces with more than five thousand lawyers. In determining these numbers, lawyers registered in the bar association and lawyers working in public institutions and organizations and public economic enterprises are taken as basis. In the application for establishment, the petition containing the establishment request and the list containing the signatures of two thousand lawyers and the names of the four-person founding board determined by these lawyers are submitted to the Union of Bar Associations of Turkey. The Union appoints the board of founders to carry out the establishment procedures. The board of founders convenes the general assembly of the establishment within six months at the latest to make the organ elections, completes the establishment of the new bar and notifies the Union. The newly established bar association is not represented in the Union until it holds its first ordinary general assembly with elections, and it holds its first ordinary general assembly with elections in accordance with the provision of Article 82. If the number of lawyers falls below two thousand, the Union notifies the relevant bar association in writing to ensure that the minimum number of lawyers is provided within six months. If the deficiency cannot be remedied within the given period, the legal entity of the bar association is terminated by the Association and the termination decision is announced on the official website of the Association. Lawyers and interns registered to a bar association whose legal entity has ceased to exist shall register to that bar association, if there is a bar association in that province, within fifteen days from the date of announcement, or to the bar association of their choice if there is more than one bar association, and their ongoing work and transactions will be carried out by the bar association to which they are registered. The liquidation procedures of the bar whose legal entity has ceased are carried out by the last board of directors under the supervision and control of the Association, and the remaining assets are transferred to the Association.”

⁸¹² “Opposition Lawmakers, Lawyers Stand against Bar Association Bill,” *Ahval*, July 11, 2020, <https://ahvalnews.com/bar-associations/opposition-lawmakers-lawyers-stand-against-bar-association-bill>.

lawyers, erode professional solidarity, and make it impossible to implement the rule of law. The new regulation also raises concerns that it may lead to the formation of “partisan bar associations” that are aligned with the government, thereby undermining the unity and strength of bar associations.

Furthermore, the Venice Commission expressed concerns about the amendments, stating that they could undermine the independence of the legal profession and restrict the freedom of expression and assembly of lawyers. The Commission recommended that the Turkish authorities engage in dialogue with the bar associations and take their views and concerns into account in the legislative process. Furthermore, the Commission urged the Turkish authorities to respect the independence of the judiciary and the legal profession and to ensure that lawyers can carry out their professional duties without fear of reprisals.

Furthermore, despite initial expectations that the establishment of multiple bar associations in Turkey would have a significant impact, the system did not yield the desired results. Despite the government’s efforts, the İstanbul Bar Association No. 2 and the Ankara Bar Association No. 2 had difficulties garnering the minimum requirement of two thousand members⁸¹³. In fact, the Ankara Bar Association No. 2 is currently at risk of dissolution, given that its membership has dwindled below the required threshold⁸¹⁴.

The second major change to the Attorneyship Law is the new rules for the number of delegates each bar association can send to the Union of Turkish Bar Associations General Assembly. Under the previous model, bar associations were required to send an additional delegate for every 300 members above the minimum of three. However, the amended Article 114 now mandates a minimum of four delegates - three elected and one *ex officio* - and an extra delegate for every 5,000 members⁸¹⁵. As a result, larger bar associations such as those in İstanbul, Ankara, and İzmir have seen a significant reduction in their delegate count. This amendment, marketed as an effort to promote fairness in

⁸¹³ “Selman Ögüt: Bu Bize Ayıp Olarak Yeter,” *Gazete Duvar*, September 17, 2020, <https://www.gazeteduvar.com.tr/gundem/2020/09/17/selman-ogut-bu-bize-ayip-olarak-yeter>.

⁸¹⁴ Alican Uludağ, “İktidar Desteğiyle Kurulan Ankara 2 No’lu Barosu Kapanabilir,” *DW*, January 19, 2022, <https://www.dw.com/tr/iktidar-destegiyle-kurulan-ankara-2-nolu-barosu-kapanabilir/a-60486096>.

⁸¹⁵ Law on Attorneyship no. 1136, April 7, 1969, art. 114/1, 2, 3. “The highest body of the Union of Turkish Bar Associations is the General Assembly.

(Amended second paragraph: 2/5/2001 - 4667/61 art.) The General Assembly is established with three delegates each, elected by secret ballot from among the members of the bar associations who have at least ten years of seniority in the profession of lawyer. The current presidents of bar associations and the lawyers who have served and are serving as presidents of the Union of Turkish Bar Associations are natural members of the General Assembly of the Union and have the right to participate in voting, vote and be elected.

(Amended third paragraph: 11/7/2020-7249/18 art.) One delegate for every five thousand members is also elected by the general assemblies of the bar association.”

representation, its impact has been felt most by the more prominent bar associations advocating for the rule of law and human rights in Turkey.

Moreover, beyond implementing the multiple bar association system dissenting voices in the legal profession, the Turkish government also employs the prosecution of lawyers as another means of pressure. According to a report by the Arrested Lawyers Initiative covering the period between 2016 and 2022, over 1,600 lawyers were arrested and prosecuted, while 615 remain in pre-trial detention. Additionally, 474 lawyers were convicted of membership in an armed terrorist organization or making terrorist propaganda, resulting in a total of 2,966 years of imprisonment⁸¹⁶. Although some of these lawyers have been associated with FETÖ, the alleged mastermind behind the 2016 coup attempt, others have been prosecuted and/or sentenced for their involvement with the PKK and other small, illegal left-wing groups due to their participation in press statements and demonstrations⁸¹⁷.

As previously mentioned, the use of criminal law and anti-terrorism legislation to target lawyers' legitimate professional activities undermine the rule of law. Specifically, the use of vaguely defined crimes to arrest and prosecute lawyers, politically motivated prosecutions with insufficient evidence, and trials in courts lacking independence and impartiality. An example of this problem can be found in an Amnesty International report⁸¹⁸ on the mass arrest of lawyers in Ankara. The report notes that the lawyers were primarily questioned about their professional activities, including the types of cases they handle and the number of cases involving suspects allegedly linked to the FETÖ. They were also questioned about their contractual and financial arrangements with clients, how they obtain clients, and the typical fees charged. In addition, the authorities inquired about the lawyers' professional relationships with other lawyers, including whether they attended each other's hearings or shared case files, suggesting an organizational connection. All of these questions suggest an unwarranted and unjustifiable intrusion into the professional activities of lawyers.

Furthermore, the government actions have increasingly focused on leaders of Turkey's most prominent and vocal bar associations. These leaders face criminal investigations for their press statements or actions that are deemed unfavorable by the

⁸¹⁶ The Arrested Lawyers Initiative, *The Crackdown: Systematic Arbitrary Imprisonment of Lawyers in Turkey (2016-2022)* (December 2021), 8.

⁸¹⁷ Human Rights Watch, *Lawyers on Trial: Abusive Prosecutions and erosion of Fair Trial Rights in Turkey* (2019), 1.

⁸¹⁸ Amnesty International, *Public Statement: Turkey: Politicians, Lawyers, Activists Targeted in New Wave of Mass Arrests* (EUR 44/3221/2020) (October 26, 2020), 4. <https://www.amnesty.org/en/documents/eur44/3221/2020/en/>.

government. These investigations represent a concerning trend of using the criminal justice system to stifle dissent and limit the freedom of expression in Turkey. The prosecution of Ahmet Özmen, the former president of the Diyarbakır Bar Association, and other members of its board of directors is a notable example of this phenomenon. These individuals faced charges of insulting the Turkish nation due to a press statement titled, “We share the unmitigated great sorrow of the Armenian People”⁸¹⁹. Although they were eventually acquitted, this case underscores the ongoing threat of judicial harassment faced by those who exercise their right to dissent in Turkey.

In conclusion, the legal profession in Turkey is facing increasing restrictions and pressure, especially with the implementation of the multiple bar association system and changes to the Attorneyship Law. Here too, the fundamental right to express dissent and criticize the government is facing mounting threats, as lawyers who represent civil society and dissidents are being subjected to prosecutions, intimidation, and harassment. The multiple bar association system may have the potential to undermine the unity and strength of bar associations, and the new rules for the number of delegates appear designed to weaken the power of influential bar associations. Moreover, the prosecution of lawyers is being used as another means of pressure. It is essential to protect the independence of the legal profession and ensure that lawyers can carry out their professional duties without fear of reprisals to uphold the rule of law and protect human rights in Turkey.

⁸¹⁹ “Former Board of the Diyarbakır Bar Association to be Prosecuted over a Press Statement on April 24,” *The Arrested Lawyers Initiative*, December 8, 2019, <https://arrestedlawyers.org/2019/12/08/former-board-of-the-diyarbakir-bar-association-to-be-prosecuted-over-a-press-statement-on-april-24/>.

CONCLUSION

This study examined how the 2017 constitutional amendments in Turkey have affected the relationship between the executive and the opposition and whether these amendments established a hyper-presidential system. This research is important to see the impact of constitutional amendments on democratic institutions, especially the potential weakening effect on checks and balances. Not only Turkey's democracy but also the systems of other countries around the world that have made or will make changes to strengthen the president hold valuable lessons. Turkey's experience with hyper-presidentialism also provides an important case study of the trend of authoritarianization taking place on the world political scene. The erosion of democratic institutions through the weakening of checks and balances and the violation of political rights and freedoms, both as a consequence of and in tandem with this erosion, informs the effort to protect human rights.

After Turkey's 2017 constitutional amendments, studies on the Turkish political system became quite widespread. These studies have compared the US presidential system and generally concluded that Turkey has a unique Turkish-type presidential system. Although it has been mentioned in Turkish academia that Turkey's system is similar to that of Latin American countries, studies comparing them have not been prevalent. In particular, when analyzing presidential systems, an analysis was made between the legislative and executive branches, and it was concluded that the president has excessive power over the legislature. However, unlike the United States, Turkey has a multi-party system; therefore, it is important to analyze the system accordingly.

The study began with the premise that Turkey's political system exhibits characteristics of a hyper-presidential system, and the comparison was made accordingly. The examination of the constitutional arrangements in comparison with both the US, which is the archetype, and Latin American presidential systems, where the concept of hyper-presidentialism emerged and where Turkey's similarities are always emphasized, attempts to fill the gap in the literature. In addition, the examination of the opposition in the hyper-presidential system, both parliamentary and civil dissent, also aims to fill the gap in the literature.

First of all, because the 2017 constitutional amendments were adopted in an environment where the country was in a state of emergency, governed by emergency decrees, and the pressure on the opposition was extreme, which has led many to regard the referendum as a plebiscite. The overt action by the president to change the rules of the game and centralize power in their hands is required in a hyper-presidential system,

which, based on Larkins' theory, fits the system Turkey is in. In addition, one of the important phenomena of hyper-presidentialism is to undermine the system of checks and balances. Presidents intentionally undermine the legislature and make it under the control or dominance of the president's political party.

Having considerably empowered himself, the president has endeavored to keep the legislature in his hands. In this case, the president organized the rules in order to hold the parliamentary majority. Accordingly, an analysis of electoral legislation and the political party system in Turkey shows how easily the parliament can align with the president, creating a fusion of powers. Thus, in a system where the majority of the parliament is aligned with the president, it becomes impossible for the legislature to oversee the executive, which is indispensable in a presidential system. In this situation, the only institution that can monitor the president is the opposition. However, this hyper-presidential system is structured to limit the opposition's capacity to monitor the president. An examination of Turkey's checks and balances mechanisms with the US and Latin American presidential systems reveals Turkey's similarities with Latin American presidential systems. A more detailed examination under each heading would yield more accurate results, but for the scope of this study, this general comparison is deemed sufficient.

The comparison suggests that Turkey's presidential system differs significantly from what the ruling party describes as a unique system. It is certainly far from the US system, but it is very similar to the presidential systems we have seen in Latin American countries, which have long been known as the land of presidentialism. It has been widely studied and demonstrated that these systems empower the president and deliberately weaken checks and balances. It might be assumed that the government has taken this Latin American system as an example. Given the prevalence of human rights violations in these systems, their influence suggests an approach to constitution-making that leans toward centralization of power.

It would be an oversimplification to claim that civil dissent was freely permitted in Turkey before the recent political period. Dissent has never been generously tolerated in any period. However, there have been various periods of this spectrum of repression. The period of the establishment of hyper-presidentialism that this study focuses on shows that this repression was more intense than ever. It was during this period that the pressure environment detailed above was created to facilitate the introduction of hyper-presidentialism. At the same time, civil dissent continued to be further suppressed as a result of hyper-presidentialism.

This study cannot aim to provide a formula on how to prevent the authoritarianization of states. However, in comparative constitutional law, it is important to examine the relationship between the executive and the legislature as well as the relationship between the executive and the opposition while examining multi-party presidential systems as opposed to the US system. This study aims to contribute to the wider debate on what Turkey's political system should be after the 2017 constitutional amendments. I hope that doing so under the concept of hyper-presidentialism and by comparing Turkey both with the US and Latin American presidential countries brings a different perspective to the general discussions in academia.

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