TESEV DEMOCRATIZATION PROGRAM

Making of a New Constitution in Turkey Monitoring Report: *The Basic Principles and the Choice of Government System in the New Constitution*

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Foreword

Özge Genç, *TESEV Democratization Program*

It has been two years since the work began to write a new constitution under the roof of the Turkish Grand National Assembly (TBMM). Currently, we see that the four political parties which make up the Constitutional Reconciliation Commission have not reached an agreement in many areas that would render the constitution new, and that they continue to have political-ideological divides between them that are hard to overcome. One of the controversial issues is the government system, which closely concerns not only the executive body, central-local administrative relations, justice in representation and the judiciary, but also basic rights and liberties.

As we have previously stated in the third monitoring report, which was released as part of our "Constitutional Monitoring" study, the proposals of the political parties regarding new legislation on the government system are not the type of remedies that can help solve systemic problems. The presidential system as offered by AK Party, which is based on the vision of an efficient state apparatus that can operate with an increased pace, responds only to the party's own needs. CHP and MHP fail to suggest a democratic, pluralist and individual-based system that will improve the parliamentary system by eliminating problems in representation, and thus, fail to provide a solution to the troubled parliamentary experiences of the past and the present. The current positions of the political parties on the matter do not allow for an effective debate to take place concerning the government system. Unless a new constitution is written, however, we will have to face the problem of a popularly elected presidential office that has authority but lacks responsibility along with new problems in representation.

The present report is the fourth of a series of monitoring reports in which the TESEV Democratization Program follows and analyzes the process of constitution making, and it addresses the selection of a government system in the new constitution. It aims to offer a substantial basis for the public debates on the government system which accompany the process of constitution making, and to provide a reference point for such debates. The report, which was written by Levent Köker, intends to assess the presidential and parliamentary systems proposed by the political parties, establish their strengths and shortcomings, and deal with the current problems of the political system in order to answer the question of what kind of a system is needed. Drawing on several world examples, Köker searches for answers to the questions of "if a choice is to be made between the parliamentary and the presidential system, which will be acceptable according to which criteria?" and "what is an ideal parliamentary or presidential system?" In the final section of the report, he touches upon options like the semi-presidential system and a party-affiliated president, which are sometimes mentioned in the debates on the issue.

One important point repeatedly emphasized by the report is the existence of sine qua non principles which a system needs to be based on in order to be considered democratic, regardless of the form of government. Köker sums up these principles under the headings of the philosophy of state, society and politics; rights and liberties; and local autonomy and the independence and impartiality of the judiciary.

As indicated by Köker, the tradition of parliamentary government has historically been overwhelmed by a strict authoritarian bureaucratic tutelage in Turkey. In this regard, while the parliamentary system may be a preferable form of government given Turkey's experience with democracy, it is clear that this is not an ideal system, either, if it is not subject to a consistent set of principles. On the other hand, Turkey lacks the kind of political culture and the kind of public administration tradition required for an ideal presidential system. The notion that there is a positive correlation between stable government and the presidential system stands in contradiction with the principle that a constitutional state mechanism requires the separation of powers, which is the fundamental raison d'être of the presidential system. Therefore, it is not possible to regard the proposals of the political parties as liberal suggestions with the capacity to solve the most basic problems that have led to Turkey's need for a new constitution.

Considering the inadequacy of the current debate in solving Turkey's democratization problems, it will not be wrong to argue that the debate on the government system is likely to emerge again and again. Thus, it is necessary to, first, discuss what the sine qua non principles for the new constitution and the new political system should be, and then turn to a discussion of systems when an agreement is reached on those principles. No system is permanent, and what is important is that the debate on what kind of a system will be adopted should be undertaken in an informed and participatory manner.

Consequently, we hope that the fourth monitoring report prepared as part of the TESEV Democratization Program's "Constitutional Monitoring" study will offer a foundation for the debate on the government system and lead to the creation of a platform for debate that is prudent and not solely reactionary.

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[*] The views expressed in this report belong to the author and may not coincide partly or completely with those of the contributors.

Introduction

Turkey has nearly reached, albeit slowly, a crossroads in the process of making a new constitution. This crossroads probably will become even clearer in the fall months, when we expect to witness the process of solving the Kurdish issue, called the peace and solution process, gain speed. It seems that if the building of an entirely new constitutional order fails, a partial constitutional amendment will emerge as an inevitable alternative. One of the major reasons for this stems from the defects of the established constitutional order, which comprise the main source of the government system debate ignited by AK Party's proposal for a presidential system. Foremost among them is that the constitution of 1982, which appears to adopt a parliamentary system, has, in violation of that system choice, created a presidential office that carries too much authority. Thus, since it has created such an "authorized but irresponsible" presidential office, the current system is already defected. Unless any changes are made, this defect is likely to lead to new conflicts and crises from 2014 onwards, when the president will start being popularly elected. Therefore, the system needs to be rebuilt within a framework of logical coherence and legal suitability that takes into account the relationship between authority and responsibility. It is from this perspective that the options of the presidential and parliamentary systems and "intermediary options" which share some features with the former systems, such as the semi-presidential system or having a party-affiliated president, are mentioned and discussed.

In this report, we aim to address the debate over the new constitutional order which has the presidential and parliamentary systems as its axes, and in doing so, we acknowledge that a set of basic principles can be defined that should be part of the new constitutional order, regardless of the choice of government system. In other words, we believe that whether the government choice is the presidential or the parliamentary system or the intermediary option of a semi-presidential system, or to call it by its recently popular name, "a parliamentary system having a party-affiliated president," there are indisputable principles that apply to basic issues such as rights and liberties, the independence and autonomy of the judiciary, and decentralization. In accordance with these basic principles, the rest of the report offers separate discussions of the presidential and parliamentary systems both through examples such as the USA and England that form a basis for conceptual debate, and through other world examples along with an assessment of the two systems in the Turkish context.

I. The Basic Rules and Principles That Should Be Part of the New Constitutional Order

As is known, the constitution is a set of norms that determine the basic institutional structure and the modus operandi of the state. It includes various fundamental principles, rules and mechanisms to ensure that the state maintain respect for human rights and basic liberties. Needless to say, every constitution rests on a philosophy of state, society and politics, and it is beyond doubt that there must be harmony and coherence between the norms regarding these three elements.

A. THE PHILOSOPHY OF STATE, SOCIETY AND POLITICS

As has often been pointed out, the Constitution of 1982 has an authoritarian character. This is seen very clearly in the statements in the "Introductory Chapter" incorporated to the constitutional text. The conception of the state in the Constitutional of 1982 runs contrary to "the modern constitutional understanding," which involves the restriction of the state by a system of law based, especially and primarily, on basic rights and liberties. Starting from the opening sentence, it is emphasized that the constitution establishes "the eternal presence of the Turkish homeland and of the Turkish nation and the inseparable integrity of the Supreme Turkish State," and is grounded, in line with Kemalist nationalism, on "the eternal presence of the Turkish Republic." If a constitution opens with praise for the state, then it must have been written from essentially a state perspective and is in fact an authoritarian constitution.

It is without doubt that at least the following two problems are present in the authoritarian essence that characterizes the Constitution of 1982. The first among them is the contradiction that results from the attempt of the Constitution to, on the one hand, regulate respect for human rights and basic liberties in compliance with this authoritarian, nationalistic and statist understanding and, on the other hand, adopt an approach that regards international agreements on "basic rights and liberties" as superior to domestic legislation. This contradiction, which sprang up following the constitutional amendments of 2004, leads to a lot of issues in practice. The root of the problem lies in the superior status of the Constitution in the hierarchy of norms. When ambiguities arise as to whether to regard "constitutionally acceptable legislation" or international normative criteria concerning basic rights and liberties as fundamental, the judiciary has almost always been in favor of the Constitution and legislative provisions. Therefore, there is a need for reform to eliminate this internal contradiction of the Constitution of 1982 so that practices can be implemented in conformity with the modern constitutional understanding.

Another problem that needs to be addressed, and which is potentially more fundamental, is that the basic rules and principles of the Constitution of 1982 openly fail to respect the modern constitutional understanding and the multi-identity nature of the Turkish society.

This discrepancy, combined with the internal contradictions of the constitution, reveals the obligation of the new constitution to rest on an understanding of state, society and politics which is ultimately based not on the state, but on human freedom and social pluralism.

B. BASIC RIGHTS AND LIBERTIES

In accordance with the idea that the new constitutional order must rest on a liberal foundation based on an accurate understanding of the concept of constitution, we can proceed to make concrete suggestions on what kind of an approach is needed in the area of basic rights and liberties, which are an indispensable part of a constitution.

(1) Human Rights Approach:

First of all, the approach to human rights incorporated in the Article II of the Constitution of 1982 should be abandoned. As is known, this article, which is one of the unchangeable parts of the constitution, involves the phrase "a state respectful of human rights." Yet, not only has "the state respectful of human rights" been restrained by the nationalist-statist understanding in the "Introductory Chapter," but at the same time, this restraint has been reinforced by the phrase "respectful of human rights... within an understanding of social peace, national solidarity, and justice." Despite the many changes that have occurred in the Constitution of 1982, an important number of special regulations which cannot possibly comply with a liberal constitutional understanding have been made in the domain of basic rights and liberties in accordance with the authoritarian state philosophy, and with the said statement in Article II, which is a product of that philosophy. All of these regulations are concrete extensions of the nationalist ideology aimed at transforming society into a homogenous nation based on Turkishness and on "Muslimhood under state control/within boundaries drawn by the state," an ideology which was adopted in the single-party authoritarian era of the Republic in Turkey.

The new constitutional order should abandon this general approach to basic rights and liberties, and, at the very least, adopt, without any reservations, the approach found in the contemporary international agreements to which Turkey is a party. In this regard, the option should be considered to promote the statement that "international agreements on basic rights and liberties will be regarded as fundamental" as one of the general provisions concerning basic rights and liberties in the new constitution, and to bring forth a regulation requiring, in clearer terms, that international legislative provisions be regarded as the highest norms of the legal order.

With regard to this last regulation, it must be said that the granting of broader freedoms (in the new constitution and in legislations enacted under this constitutional order) than that exist in international law can be formulated as "a liberal exception."

(2) Freedom of Religion and Conscience:

The first example in this regard is the "compulsory instruction in religious culture and morality" in Article 24, which regulates "the freedom of religion and conscience;" the second is "the ban on the instruction in a language other than Turkish as a mother tongue" in Article 42; and the third is the regulation concerning the Directorate of Religious Affairs in Article 136. To start with the last

example, the foundation of the Directorate of Religious Affairs following the abolition of the office of Sheikh al-Islam in 1924 revealed what a central place the religious establishment was given in state control, since it was authorized to handle issues of "worship, faith and morality" in society in an attempt to construct a homogenous cultural entity. This regulation in the Constitution of 1982 elevates this legislative-level norm to constitutional status and requires that the Directorate serve national integration and solidarity.

Therefore, it is imperative to grant the Directorate of Religious Affairs a genuine autonomous status, release it from the duty to create a homogenous national identity and restructure it as an institution impartial to different religions and creeds in accordance with a pluralist/ multiculturalist social environment.

(3) Education in the Mother Tongue:

The Constitution of 1982 has the aim to create a homogenous society, which traces its origins not only to the Alevi question but also to the approach to citizenship that refuses to view non-Muslims as acceptable citizens, and its Article 42 consolidates the ban on the mother tongue, which is one of the most critical aspects of the Kurdish issue. This regulation, part of a series of legislations and actual practices that may go so far as to ban the public use of the Kurdish language, states that the citizens of Turkey cannot be instructed in languages other than Turkish as their mother tongues at school.

This statement should not be part of the new constitution, and the legislative organ should be liberated to solve the mother tongue issue as it sees fit. This is the minimum condition for the establishment of a liberal constitutional order. In addition, an affirmative regulation in the new constitution to recognize the rights of the citizens of Turkey to receive education in their mother tongues may be considered, which is perfectly possible and legitimate if the relevant provisions of the Treaty of Lausanne are interpreted in the light of contemporary international norms relating to basic rights and liberties.

(4) The Right to Citizenship:

Constitutional regulations concerning the right to citizenship is another important issue in the area of basic rights and liberties. The gist of this issue is found in the fact that the concept of the republic, which is supposed to be the expression of a democratic and pluralist political organization, has been equated in Turkish political and legal practices with the ideal of creating a homogenous national community. In the first constitution of the Ottoman State, called Kanun-ı Esasi, it was perhaps an obligation to integrate different ethnic and religious/sectarian communities under the umbrella of a common citizenship identity. The approach embraced by those who made the Constitution of 1876 was to define all citizenry of that multiethnic, multiconfessional and multisectarian society as Ottoman. It is not possible, however, to argue that their approach was the outcome of an ideal of creating a homogenous nation through the means of a "nationalist" state. On the other hand, it appears that the labeling of citizens as Turkish in the Constitution of 1924, inspired by the Constitution of 1876, has constituted one of the sources of today's aggravated problems such as (a) the social exclusion of non-Muslims, (b) the denial of non-Turkish identities, particularly the Kurdish identity, and (c) the subordination of all differences to a politics of Turkification.

This approach to citizenship, which poses a problem for a new, liberal and democratic constitutional order, has been rearranged in the Constitution of 1961 following the military coup of 1960 with a more severe emphasis on Turkishness and in an internally contradictory manner. This new arrangement, which reflected into Article 66 of the Constitution of 1982 without a change, states that "anyone who is bound to the Turkish state through the bond of citizenship is Turkish." The contradiction is between the naming of the state as "the state of Turkey" in Articles 1 and 3, and its description as "the Turkish state" in the definition of citizenship. Anyone who has a basic knowledge of grammar will realize that Turkey is a "country name" and Turkish is the "description of an identity" belonging to a state. While the use of the phrase "the state of Turkey" in Articles 1 and 3 is in line with the basic quality of the contemporary state, which is determined territorially, the phrase "the Turkish state" employed in the definition of citizenship, since it denotes an identity, runs contrary to the definition of the contemporary state in political and legal terms, especially given that the contemporary state structure is a liberal, democratic and pluralist state based on the rule of law.

In order to both eliminate this contradiction and adopt a pluralist and democratic approach regarding basic rights and liberties, no contemporary democratic state should employ such a definition of citizenship in its new constitutional order; it will suffice to constitutionally guarantee that citizenship is a basic right and nobody can be deprived of it.

(5) Freedom to Organize:

Another important issue in the area of basic rights and liberties concerns constitutional limitations to the freedom to organize. Among such limitations, one fundamental problem faced by political parties requires immediate attention. As one of the countries that claim to embrace democracy, Turkey is notorious for the number of political parties it has closed. The root of the problem lies primarily in the constitutional regulation (in Article 68) on "the principles to abide by" for the political parties and in the relevant prohibitions, details of which are found in the Legislation on Political Parties.

In the new constitutional order, it is crucial to eliminate all prohibitions in Article 68 leading to the closure of political parties, to provide a guarantee that only violence and racism can be grounds for closure, and to generate a process of decision-making that depends on the qualified majority of the legislative organ in the closure procedure. The regulations of the Constitution of 1961 preceding the military intervention of 12 March 1971 can be taken as examples.

(6) Restrictions of Basic Rights and Liberties:

Another important regulation that deserves a place in the new constitutional order deals with what kinds of criteria are needed for the restriction of basic rights and liberties. The approach brought about by the amendments of 2001 is appropriate as a principle and should be preserved in the new constitution. According to this approach, basic rights and liberties can only be restricted by law and on the grounds specified in the articles regulating the relevant rights or liberties, and this restriction cannot apply to the core of a right or a liberty.

It will be sufficient to improve this approach by openly specifying in the new constitution the principles of "regulation by law, urgency in terms of the requirements for a democratic social

order, and moderation," which must be taken into account to impose restrictions in compliance with the European Convention on Human Rights.

The phrases "the wording and spirit of the Constitution" and "the requirements of the secular Republic," which exist in the current constitution, are not only unnecessary, but inappropriate at the same time, since they can prepare constitutional grounds for deviations from the standards in the ECHR, to which Turkey is a party.

A final point to mention here is that the current regulation, which states that basic rights and liberties can be restricted by extraordinary decrees in "states of emergency" (martial rule and war in technical terms) and judicial control (appeal) is a closed option in such cases, should be amended.

Considering Turkey's historical experiences, it is essential that the new constitution abandon this regulation, which means suspension of the democratic rule of law, and involve instead a regulation making such decrees subject to judicial control so that a democratic and liberal order is ensured.

C. THE BASIC ORGANIZATION OF THE STATE: LOCAL AUTONOMY AND THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

Whether the choice of government system is the presidential or the parliamentary system or an intermediary formula, there are two areas in which the new constitution should reshape the basic organization of the state according to two principles. First, it should dismiss "the centralist state tradition," which needs to be considered along with the attempts at reform since the Tanzimat Era, and replace it with decentralization. Second, in order for the judiciary to be independent and impartial, it should offer a regulation different than the Supreme Council of Judges and Public Prosecutors, which was formed as part of the constitutional amendments of 2010.

Local Autonomy

The following summarizes in brief what needs to be done concerning decentralization: the Turkish Republic has embraced decentralization as a constitutional principle, but tried to balance it with the principle of "the integrity of government." This "balancing" has been attempted through the "tutelage control" of the central government on the local governments; therefore, the principle of decentralization has translated into the principle of limited local organization under the overwhelming pressure of the centralist tradition.

A suggestion should be made to change this radically and to adopt and implement all provisions of the European Charter of Local Self-Government in the new constitution.

Furthermore, if we approach the matter from the perspective of EU accession, which continues to hold a critical place in Turkey's vision of the future, we find that most of the established democracies of Europe either are federations or are unitary states with local self-governments that have solidified their autonomies through local legislative assemblies.

In this regard, it is essential that the new constitution of Turkey embrace a broad understanding of decentralization allowing for the creation of local legislative organs. The approach to this matter should be to make the TBMM and local legislative assemblies share the legislative

power, which is granted to the TBMM as "a general power" under the current constitutional order. Regarding how to undertake this task, it is necessary to envisage a regulation specifying the areas in which the legislative power belongs to the TBMM and designating other areas as the domain of local legislative organs, just as is the case in the Italian Constitution.

Independent and Impartial Judiciary

The independence and impartiality of the judiciary is one of the assurances of the contemporary democratic constitutional state. Regardless of the arrangement of legislative-executive relations (as expressed through the choice of the presidential or parliamentary systems), the independence and impartiality of the judiciary is among the most fundamental institutional principles adopted, even though it may take on different forms depending on the historical, social, cultural and political character of each state. The importance of achieving the independence and impartiality of the judiciary fully in the Turkish context lies in the fact that the judicial power has functioned as an instrument of bureaucratic tutelage on democratic political processes particularly since the Constitution of 1961 and even more so since the military intervention of 1971 and the regulations introduced by the Constitution of 1982. Steps such as the restructuring of the Supreme Council of Judges and Public Prosecutors and the narrowing of the sphere of duty and authority of the military courts following the constitutional amendments of September 2010 are important, but insufficient since the executive organ continues to maintain its influence, especially on judges.

In addition, it still does not seem possible to argue that these are the kinds of regulations that truly abide by the principles of "judge security" and the "natural judge," which are the concrete expressions of judicial independence and impartiality. The basic point that deserves attention here is the difference between the positions and functions of the judge and the public prosecutor within the judiciary. The judge is a public official with the duty to offer judgment on a legal conflict by free will, good conscience and equity, regardless of what the identities and positions of the parties are. The public prosecutor is a counsel for the prosecution in the name of the public (or sometimes directly in the name of the state) and is a "party" to the judiciary process, and thus, can receive instruction from the legislative organ when necessary. When this difference in position and function between the judge and the public prosecutor is taken into account, it becomes clear that they should be subject to different institutional regulations so that the independence and impartiality of the judiciary can be ensured.

Therefore, (1) personnel and discipline affairs of judges and public prosecutors should be carried out by separate committees, and (2) in order to prevent any kind of contact between judges and the executive organ, the principle of "full autonomy" should be embraced in the formation of the committee to deal with personnel and discipline affairs of judges.

In this regard, the 18-member "Supreme Committee of Judges" as it existed in the Constitution of 1961 before the military intervention of 1971 is the "closest-to-ideal" model since it entirely fits the views in the reports of the Venice Commission of the Council of Europe on the matter, and it will be well-placed to adopt this model in the new constitutional order. Following from there, we can say that the regulations of the Constitution of 1961 in their initial forms can be taken as positive examples on issues relating to judicial independence and impartiality such as judge security and the natural judge.

II. The Parliamentary System Option

We can argue that basic qualities of the parliamentary system have dominated the entire constitutional tradition of Turkey, including its Ottoman past (1876, 1909, 1921, 1924, 1961, and 1982). Undoubtedly, the first constitution, Kanun-ı Esasi, dated 1876, was a "constitutional edict," which granted the sultan nearly unlimited power. As a matter of fact, the system had to wait until the amendments of 1909 to obtain its full parliamentary character, and in the meantime, a thirty-three-year "period of autocracy" was experienced. On the other hand, the system introduced by Kanun-ı Esasi was, even if only formally, "parliamentary." Similarly, the government system brought about by the Constitution of 1921, Teşkilat-ı Esasiye Kanunu, was a convention system (a parliamentary government) based on the unity of powers. Many aspects of this system were conserved in the era of the Constitution of 1924, but these constitutions have contributed to the ability of the legislative body, the foundation of the parliamentary system, to sustain its superiority as a political and constitutional tradition throughout the Republican era. However, while it conserves the qualities of the parliamentary system, the Constitution of 1982 establishes a presidential office having power but not responsibility and thus involves a serious deviation from this tradition, and today it faces us as a constitution involving contradictions that have comprised the primary source of the contemporary system debates. In order to offer an accurate assessment on the matter, it will be useful to specify the characteristics of the parliamentary system and then to elaborate on several world examples.

A) THE PARLIAMENTARY SYSTEM THROUGH THE ENGLISH EXAMPLE

Listed below are the typical attributes of the parliamentary system, a system which historically first developed in England:

- The executive branch (the "Cabinet" or the "Council of Ministers") comes from within a legislative branch consisting of popularly elected representatives, and owes its democratic legitimacy to the "confidence" of the legislative body.
- The executive branch is responsible and accountable to the legislative branch, to which it is bound both organically and for legitimacy.
- The legislative branch has the power to dismiss the executive branch partly (one or some of its members) or completely (the entire Cabinet) by a vote of "no confidence."
- On the other hand, the power of the executive branch to annul or renew the legislative branch does not typically exist, even though this has occurred in some actual examples of the parliamentary system in history.
- The "President," who may be called a king, a president of the republic etc. depending on the state system, denotes a ceremonial office representing the personality of the state and is, as a rule, without authority and thus without responsibility.

- While it is a rule for the president to be elected by the legislative branch in parliamentary systems in which the form of government is a republic, examples exist in which he or she is directly elected by popular vote. Conceptually, the typical scenario is that the president is without power and responsibility, regardless of how he or she comes into office.
- The legislative branch, the basic body of the parliamentary system, can have one or two assemblies.

B) THE EVALUATION OF OTHER WORLD EXAMPLES

Today there are about eighty countries in the world governed by a parliamentary system. (This number does not include countries such as France that are governed by a semi-presidential system.) In terms of whether they fulfill the universal standards for a democratic constitutional state, it is possible to make the following points regarding the parliamentary system experiences of many countries including Turkey that appear semi-democratic:

(1) In Terms of Political Stability:

Political science literature reveals that parliamentary systems are more resistant to social, economic and political crises, and thus, they are less prone to system failure and to the replacement of a democratic regime by an authoritarian dictatorship. This fact appears even more significant considering that among European democracies, one of which is Turkey, the most stable and advanced democracies are constitutional monarchies governed by a parliamentary system.

(2) In Terms of Having a Unitary or Federal Structure of the State:

Based on their structure, world states can be divided into two groups: unitary and federal states. There is even a third category, consisting of "regional states," which are unitary states having local governmental units with high regional autonomy. Looking at the government systems of these state structures, particularly in the European context, it is possible to make the following point: a not insignificant number of countries governed by a parliamentary system are at the same time federal or "regional unitary" states; the countries governed by a presidential system, which make about one third of all world countries, are, as a rule, "federal" or "regional unitary" states; and unitary state structures exist rarely and in small-scale countries or island-states.

(3) In Terms of Having a One- or Two-House Legislative Body:

Looking from this perspective, it seems difficult to find a general pattern regarding whether the legislative body has one or two houses in states governed by a parliamentary system. Nevertheless, a great majority of the European states which can be deemed stable and established democracies has two-house legislative bodies. Another relevant fact may point to the difference between the parliamentary and the presidential systems: while no general pattern can be detected regarding when the legislative body has one or two houses in a parliamentary system, it is possible to conclude that, in a presidential system, the legislative body is two-house, and that one of the houses, that has the characteristics of a Senate, exists as an institution to inspect executive transactions by the president, who has the executive power, and if need be, to prosecute him or her.

(4) In Terms of Whether the President is Elected by Popular Vote:

The election of the president directly by popular vote is the rule in a presidential system and an exception in a parliamentary system. Looking at the European context, we find that in exceptional cases such as Finland, Austria and Ireland, which are governed by a parliamentary system, the president is elected by popular vote.

C) AN EVALUATION FROM THE PERSPECTIVE OF TURKEY

In an evaluation concerning the option of the presidential system in Turkey, the following points should be highlighted:

(1) Historically speaking, we can argue that Turkey's government tradition has been close to the parliamentary system since Kanun-ı Esasi, the first Ottoman constitution of 1876. This is particularly the case in terms of the formal outlook of the constitutional rules. For instance, in the Constitution of 1876, which was a "constitutional edict" as stated earlier in this report, not only did the sultan lack responsibility, but at the same time, there were no organic bonds connecting Meclis-i Umumi, the two-house General Assembly that consisted of Meclis-i Mebusan (the Parliament) and Meclis-i Ayan (the Assembly of Notables), to the legislative body (the government), which was appointed by the sultan. The system only acquired a parliamentary character when it adopted, following the amendments of 1909, the principle that the government is responsible to the parliament. The Constitution of 1921, on the other hand, was made by the BMM (the Grand National Assembly), which regarded itself to have been founded with extraordinary powers in a state of emergency (the National Struggle for Liberation) and which embraced the idea that "the people should determine their own destiny." For this reason, it was a "convention" that rested on the BMM's notion of "national sovereignty" and thus concentrated the legislative, executive and judicial powers in its own hands. In this system, the ministers (MPs) functioned in the name of the BMM and could be dismissed by the BMM. Following the foundation of the Republic, the Cabinet established a presidential office and thus came to be appointed by the President. The Constitution of 1924 introduced the procedure of making the Cabinet subject to the TBMM in its functioning and sustained the system of the Constitution of 1921, based on the legislative supremacy, within an institutional structure akin to a parliamentary system. The critical constitutional provision here was the designation of the TBMM, which had the legislative power, as the "sole place of manifestation" of national sovereignty. The Constitution of 1961 abandoned this principle and ruled that national sovereignty should be wielded by constitutionally authorized bodies, one of which was the TBMM. The Constitution of 1982 appears to follow the same path.

In summary, in Turkey's constitutional tradition, the milestones of which were set up in 1909, 1921, 1924, 1961, and 1982, the constitutional order to best approximate the parliamentary system as the conceptual type has been the Constitution of 1961. The Constitution of 1982 deviated from the parliamentary system by introducing a presidential office with power and authority, and it attempted to establish a legally unacceptable order by maintaining the irresponsibility of the president.

(2) To move beyond formal constitutional rules and turn to sociological and political reality, the Constitution of 1876 remained inadequate as a monarchic constitution, especially in restricting the

absolute sovereignty of the sultan. The order approximating a parliamentary system brought about by the amendments of 1909, on the other hand, could not be implemented when the de facto sovereignty (single-party dictatorship) of the Committee of Union and Progress, İttihat ve Terakki Cemiyeti, was established. The strong personalities of political leaders such as Atatürk, İnönü, Bayar and Menderes made their mark on the era of the Constitution of 1924, and thus its parliamentary tendencies based on legislative supremacy remained in the shadow. While the Constitution of 1961 seems to have aimed at a typical parliamentary order, the historical and sociological attributes of Turkish politics molded the system into an authoritarian bureaucratic tutelage (or in other words, Bonapartism) under the appearance of a parliamentary order. In the period between 1961 and 1980, the presidents, all of whom were retired soldiers (Chiefs of Defense, to be precise), were decisive in critical political decision-making processes, whether directly, or indirectly as Presidents of the National Security Council. This mechanism of tutelage became even more evident with the amendments of 12 March 1971 and was eventually reinforced in all its institutional details by the Constitution of 1982. If we approach the matter from this viewpoint, we can say that Turkey's parliamentary government tradition has long suffered under the determinism of a severe authoritarian bureaucratic tutelage.

(3) Nevertheless, we can argue that the "parliamentary government" system occupies a much more favorable position than the presidential system among Turkey's current options for a government system. This is due to the fact that, unlike the parliamentary system, the presidential system lacks the kind of historical acquis, the kind of political culture and the kind of public administration tradition necessary for its typical conceptual qualities. Besides, the presidential system does not have a good record in terms of either the substantial institutionalization of the democratic liberal constitutional state or political stability except in the USA success story.

D) THE PROPOSALS FOR A PARLIAMENTARY SYSTEM IN THE NEW CONSTITUTION

Now that we have made some general observations, we can take a closer look at the parliamentary system proposals of the political parties other than the AK Party, which proposes a presidential system. One of the crucial points to pay attention to at this stage is that BDP's suggestions that are based on a parliamentary system differ from those of CHP and MHP in some critical aspects.

(1) CHP, BDP and MHP share the view that sovereignty belongs to society and hence to its representatives, a notion that is the source of the principle of legislative supremacy, which the parliamentary system is based on. However, while BDP allows for institutions of "political representation" at the regional and local level, CHP and MHP remain loyal to the existing constitutional norms, which appear to be closed to such regionalization. Nevertheless, unlike MHP, which does not mention self-government at all, CHP plans to keep the principle of "administrative autonomy" in the constitution.

(2) The rationale and the typical attributes of the parliamentary system require the existence of an executive body (the Cabinet) which emerges out of the legislative body and thus is responsible to and dismissible by it. In addition to this "executive body," there is a presidential office. It is controversial whether the presidency will be a symbolic and ceremonial office at a level required by

the parliamentary system or function as a second executive body (another head of the executive body) albeit with limited power. CHP and MHP, which appear to interpret the issue of limits to the president's power in the light of the procedure of presidential elections, propose the election of the president not by the people but by the parliament, and accordingly, the removal largely of his or her powers that result from the Constitution of 1982 except for those concerning the legislature. BDP, which exhibits a similar approach to the issue of restriction of power, maintains the procedure of "popular presidential elections" and believes that the authority of the president can be increased "by mention in the constitution" in accordance with the statement that "the duties and privileges of the president are determined by mention in the constitution" in the proposal called "the parliamentary system with a president" in comparison to the classical presidential system.

(3) Concerning the organization of public administration, which is one of the key issue areas of the new constitution, CHP and MHP adopt the existing constitutional provisions which suggest that "administration is a unified whole with its organization and duties" and bring forth the proposal to regulate the central administration and local governments accordingly, while they note that the concept of local government should imply "administrative decentralization." Independently of these proposals, BDP puts forward a three-leg administrative structure model composed of "central public administration, local public administration and regional public administration" and states that this system of administrative organization will be run according to the principles of "democratic decentralization." While it structures central public administration in the form of "regions, provinces and other progressive units," BDP suggests an amendment to the central administrative organization of the constitution and allows for "regions." In this regard, it proposes the "regional state" model for the political organization of the state and applies this model symmetrically to the category of local governments. It further proposes to form regional public self-governments with "regional assemblies" and "regional directorates;" to make members of regional assemblies subject to the same provisions as members of the TBMM; and to allow regional assemblies, which have power to make legislative regulations, to exercise authorities outside the sphere of power of the TBMM or other units of public administration, and to exercise legislative power in regions through regional directorates.

(4) On the issue of the formation of the legal system—a critical issue in terms of the concept of judicial independence, which, we emphasize, bears fundamental significance for the government system to have the quality of a democratic constitutional state—one of the remarkable points in the proposals that remain loyal to the parliamentary system is the suggestion of CHP to go back to the separation of the Supreme Council of Judges and the Supreme Council of Public Prosecutors, to terminate the power of the minister of justice and to authorize the TBMM, the Supreme Court (Yargıtay) and the Council of State (Danıştay) for the selection of committee members. MHP's proposal is to maintain the current positions of the minister of justice and his or her undersecretary, and to maintain the aspects of the current system requiring a unified Supreme Council of Judges and Public Prosecutors. BDP brings forth the proposal to form a 21-member council by the name of "the Supreme Judicial Council" which consists of three departments, each autonomous in function and budget, and a general committee, and to authorize the TBMM, the Supreme Court, the Council of State, and the judges and public prosecutors of the judicial and administrative courts to elect the members of this committee.

Now we can say that insofar as it is based on the following points, it is possible to arrive at a healthy decision regarding what kind of a parliamentary system is necessary as Turkey's new government system:

Proposals to make the parliament the highest decision-making body should be voiced more clearly as a demand for a democratic, pluralist and individual-based system. Concerning this, suggestions can be made to strengthen the parliamentary system and to restructure it in such a way as to facilitate everyday political practices. The debate remains insufficient as long as suggestions are made to merely revise the current parliamentary system or to introduce a more efficient form of rule without consolidating the mechanisms for social participation in the decision-making processes of the political system, and accordingly increasing the role of society in inspecting the processes of implementing political decisions and the consequences of these processes.

In terms of consolidating the mechanisms for social participation, it is important to note that CHP and MHP lack a clear vision of how the parliamentary system can exist within a decentralist structure of regional or local governments.

III. The Presidential System in the New Constitution

"The presidential system" as suggested by AK Party has been one of the hottest issues during the process of making a new constitution, and is likely to continue being discussed regardless of whether the process succeeds or fails. A while ago (in November 2012) AK Party submitted a proposal which it described as "the presidential system" to the Office of the Speaker of the TBMM to be delivered to the Constitutional Reconciliation Commission. Faced with reactions and criticism, the party later made statements to indicate that it merely wanted to initiate a debate about the presidential system, and that it may withdraw its proposal. It is not clear yet what kind of a position AK Party will next take on the issue.

Nevertheless, the possibility of a revision of the proposal in question is quite high since other options such as a semi-presidential system and a party-affiliated president are pronounced as well. To be able to properly discuss the subject, it is necessary to clarify what kind of a system the presidential system is.

A) THE PRESIDENTIAL SYSTEM AS A CONCEPTUAL TYPE THROUGH THE USA EXAMPLE

"The presidential system," one of the contemporary political systems which can be called democratic, was carved out at the time of the foundation of the United States and thus its fundamental characteristics can be identified with reference to the particular experience of that country. In terms of its institutional structure, this system aims to establish an order of checks and balances among the legislative, executive and judicial branches. The main rationale behind this orientation, which is sometimes called "the hard separation of powers," is the notion that an order securing individual liberties can only be established by preventing the superior sovereign power of the state from being concentrated in a single hand. The source of this notion was the desire of the Founding Fathers of the United States of America to prevent a center of absolute power corresponding to a king's sovereignty from being created in the new state established at the end of the struggle for independence from the British monarchy. It is not a secret that the Founding Fathers included in this idea of a center of absolute power not only one-person rule, but at the same time "the tyranny of the majority," which they believed could easily be born in a democratic order. Therefore, "the presidential system" implies a system in which the legislative, executive and judicial branches are organically independent of each other, and in which it is possible, owing to their independence, that they can check and balance one another.

If we look into the details of the system, we find that the following features are prominent: (1) the legislative and executive branches are formed by different sets of procedures, and there are no organic bonds between the two bodies. (2) The legislative branch consists of the House of

Representatives, in which regional units called states in the American context are represented in proportion to their population sizes, and the Senate, in which each regional unit is represented by an equal number of members. (3) The executive branch is embodied in the president who takes office through indirect popular elections. (4) The approval of the Senate is required for critical executive transactions by the President such as the management of the budget and the appointment of ministers, called secretaries, and of Supreme Court judges. (5) As illustrated by the lifetime job guarantees of Supreme Court judges, judicial independence has largely been achieved in terms of judge security. Thus, the principle that "the best government is the one that governs the least," which is the summary of the presidential system, has been realized.

In this regard, the presidential system—as a system that does not mean personal concentration of rule at all, but that also has the potential to be clogged at critical times—blossomed and thrived in the American context, the general contours of which we have described above, in an environment of extremely decentralist political culture that has internalized individual liberty as the most fundamental value.

B) THE EVALUATION OF OTHER WORLD EXAMPLES

If we consider other world examples in terms of the typical qualities of the presidential system, which we have identified above with reference to the American example, we can make the following observations:

(1) Historically, it is known that presidential system experiences took place in many countries around the world, especially in Latin American countries, but most of them failed and ended in either military or civilian dictatorships. Similarly, it is a fact that a great majority of the most advanced, stable and permanent democracies in the world today are governed, not by the presidential, but by the parliamentary system. On the other hand, it can be argued that the presidential system exists in many countries in the contemporary world, especially in Latin America, and that these countries demonstrate a relative degree of success in maintaining this system within the boundaries of a democratic order. It almost seems that the period of bitter experiences, which can be traced back to the first half of the past century, is now over.

(2) The presidential system exists in over forty countries in the contemporary world, including not only countries such as Afghanistan, Benin, Liberia and Sudan that are hard to view as democracies, but at the same time, a great majority of Latin American countries, which have had a relative success in maintaining a democratic order.

(3) The following is the list of the properties shared by the presidential systems which satisfy the criteria for modern democracy: (a) nearly all these systems are "federal states," and, in presidential systems with the quality of a unitary state, there exists regional governments having legislative power at a level comparable to a federal state. Exceptions are some small island-states such as Cyprus. (b) Nearly all these systems have a two-house legislative body and the one of them which is either the Senate or has the characteristics of a Senate has inspective power over the executive body (the president).

C) THE PRESIDENTIAL SYSTEM IN TURKEY'S SEARCH FOR A GOVERNMENT SYSTEM: AN EVALUATION

In the presidential system proposal introduced by AK Party in the process of Turkey's search for a new government system, some critical points deserve special attention in terms of common features identified with reference to the conceptual type and world examples.

(1) The first point that strikes attention is that the proposal primarily rests on the belief that there is a positive correlation between "stable government" and the presidential system. This runs contrary to the logic underlying the mechanism of checks and balances, which is the essential quality of the presidential system as a conceptual type. In other words, the fundamental raison d'être of the presidential system is the desire to institutionalize, in the strictest sense possible, the separation of powers required by a constitutional state structure based on individual liberties, not to provide the executive branch with stability. Besides, since long periods of dictatorship following frequent systemic crises and failures, rather than stable government, often took place in the non-US historical experiences of the presidential system, there is no sign that the system has the capacity to spontaneously produce stable government. Finally, Turkey does not have any government stability problems within its current system. Therefore, it is not possible to comprehend the rationale behind the proposal to introduce a new system due to a problem that, in fact, does not exist.

It will be appropriate to draw attention to one particular point here: government stability and political stability are often confused with one another, but essentially, they are different concepts. Whatever the system is, government stability can be defined as the absence of problems in the formation and maintenance of the executive body. From this perspective, there is no clear relationship between government stability and the type of government system. In other words, it cannot be argued, for instance, that the presidential system is more successful with regard to government stability. This point concerns more generally the character of the political disunity in society, and the capacity of this political disunity to cause problems in government formation and continuity is the actual source of instability.

(2) The second important point in the proposal is the regulation under "the Presidential Decree," according to which the president has power to issue "decrees" concerning legally unregulated issues when he considers it necessary. This regulation is undoubtedly inspired by the power of the president to make regulatory procedures in the American presidential system. However, the power of the American president to issue regulatory procedures, known as executive orders, is an extension of his or her duty to loyally execute the constitution and legislations, and he or she has no such power in legally unregulated areas. The regulation in the AK Party proposal allows the president the power to make regulatory transactions in legally unregulated matters and thus grants the executive body (the president) with legislative power. Therefore, this proposal remains entirely outside the framework of the separation of powers, and therefore, the logic of checks and balances, the qualities which comprise the essence of the presidential system. As such, the proposal involves the possibility of personalization of political rule.

In addition, the fact that the Constitutional Court is granted the power to check presidential decrees while more than half of the members of the Constitutional Court are appointed by the President runs contrary to the principle of "noninvolvement" between the judicial and executive branches.

(3) The third point to pay attention to in the proposal is the suggestion to conduct presidential elections and elections of the legislative branch simultaneously. This stands in contradiction with the rationale behind a typical presidential system, which requires that the executive and legislative branches be formed separately and thus exist as institutions that are organically separate from one another, and it involves a deviation that allows, by means of the synchronization of the electoral cycles, the president, who is the executive body, to bring the legislative body under his control, since he is at the same time the head of the party. It should not be interpreted as an empty prophecy or suspicion to expect this outcome to occur, especially given Turkey's political culture and traditions based on strict party discipline.

(4) Another interesting point in the AK Party proposal is that the president and the legislature are authorized to decide to renew each other's elections. This rule deepens the deviation mentioned in the previous paragraph and bears a strong potential to consolidate the power of the president, the executive body, to exert control over the legislative body. In addition, there is a suggestion to "allow the president to be nominated for yet another term in case the legislative body decides to renew elections" during his or her second term, which grants the president with a chance to stay in office for three terms.

(5) There are two remarkable points concerning the judicial dimension of AK Party's presidential system proposal, which are: the elimination of the distinction between the military and civilian courts, and the unification of the Supreme Court and the Council of State under an "Appellate Court" in the form of a single High Court. Undoubtedly, the elimination of the distinction between military and civilian courts is extremely appropriate in terms of the principles of a democratic constitutional state. Similarly, the unification of the military and civilian courts under a single High Court complies with the rationale of a typical model of the presidential system. However, considering that the Council of State is not merely an "appeal authority" as a high court, and that it serves as a first-degree court in particular cases, and also has the non-judicial function to provide an advisory opinion, the proposal appears inadequate. In addition, given that in the establishment of the High Court as an appeal authority, the Supreme Council of Judges and Public Prosecutors and the president are granted the power to elect, respectively, three quarters and one quarter of the court members, the question arises as to within which framework the Supreme Council of Judges and Public Prosecutors and the president will both use their power, but the proposal leaves this question unanswered.

(6) In the presidential system proposal by AK Party, typical features of the presidential system such as the decentralization of the political system (and hence of public administration) and the creation of a two-house legislative body do not exist.

Now that we have made these criticisms, we can say that it is necessary to take the following points into account in order to reach a proper decision concerning what the presidential system should be like as a new government system for Turkey:

- The presidential system is one of the democratic system options and should not be categorically rejected because of prejudices.
- If the basic principles and the institutional norms specified in the first section of this report are

adopted in Turkey's new constitutional order, the institutionalization of the presidential system in line with its conceptual type may have the potential to solve many problems, especially the Kurdish issue, the basic problem underlying Turkey's need for a new constitution.

- In this regard, it is necessary to note that in responding to the question why the presidential system is being proposed, the system should be formulated as a liberal proposal that will fit the equation of "more freedom, more limited state," needed in Turkey's new constitutional order.
- Accordingly, it needs to be emphasized that in Turkey's new constitutional order, the presidential system should not only involve the organization of the legislative, executive and judicial powers as independent institutions checking and balancing one another at the central level, but it should also exist within a decentralist structure consisting of regional/local governments with legislative bodies of their own.
- In this regard, it should also be stated that the presidential system will involve the institution of a Senate based on the equal representation of regional/local governments and this institution, which will be organized in such a way as to allow for equal representation of the different identities in the Turkish society, will function as a mechanism of checks and balances concerning critical executive procedures by the executive power, which will concentrate in the hands of the president.
- Another vital point that is worth mentioning concerning the presidential system option is that it is not possible to establish "the presidential system" merely by a set of constitutional rules, since it a novel system that differs sharply from Turkey's political tradition, which has ranged from an assembly government system to a parliamentary system and has the principle of legislative supremacy at its center.

If the presidential system is adopted with its features specified here, it is evident that it should be supplemented by other legal regulations relating to political life. This necessity points to extremely radical legal reforms to transform the reality of disciplined parties dominating Turkish political life; to renew, as a catalyst of this transformation, the electoral system in such a way as to allow for individual representation (for instance, by a shift to the thresholdless single-candidate narrow district majority system); and to pave the way for restructuring the relations between political parties and social organizations at the local, regional and national level.

IV. The Semi-Presidential System or "A Party-Affiliated President"

The option which is currently popular and being increasingly more frequently pronounced in government system debates is "the semi-presidential system" or "a party-affiliated president." The semi-presidential system first emerged in the aftermath of the amendments of 1962 to the French Fifth Republic's Constitution of 1958. The term was coined by journalist Hubert Beuve-Méry, investigated academically from the 1970s on by renowned political scientist Maurice Duverger and elaborated later by many political scientists and civil lawmakers. While we do not claim to reflect the entirety of the literature on this subject, we can specify the basic features of the semi-presidential system agreed upon in academia as follows: (1) in addition to a president who comes into office through direct popular elections and has legislative power much beyond his symbolic position under the parliamentary system, (2) there is a "Cabinet" which consists of ministers, and is formed in accordance with the parliamentary system, and the existence of which is based on the confidence of not the president but the parliament, and (3) the president has the power to dismiss the parliament.

According to this definition, there are a little less than thirty countries governed by a semi-presidential system in the contemporary world. The European countries among them are countries such as France, Portugal, Romania, Russia and Ukraine which, except for France, can be considered exceptional and do not offer good examples of a democratic constitutional state.

It is necessary here to take a look at France, which is perhaps the most frequently used example. The French semi-presidential system emerged in the particular circumstances of France, which had exhibited quite an unstable political development for over a century dating backwards from the Fifth Republic's Constitution of 1958, and as a result of a constitutional amendment made at the time of the ascension of General de Gaulle to office. France had thus far displayed a highly unstable democratic profile, but political rule employed political (non-legal) formulas such as the Cohabitation Agreement, a gentlemen's agreement which makes coexistence possible, to overcome a potential crisis between the president, an office with both authority and responsibility under the semi-presidential system, and the prime minister.

The "party-affiliated president" proposal being voiced in Turkey essentially overlaps with "the semi-presidential system," considering that the president has much broader power than he or she would in typical parliamentary systems. In this regard, just as the France had, for historical reasons, a constitutional system shaped by the strong political personality of General de Gaulle and came over time to be called a semi-presidential system, Turkey's historical path may lead to the establishment of a presidential system under the name of "the party-affiliated president." While this is a serious possibility, it is necessary to add that the alternative currently considered in this regard lacks appeal for a democratic experience.

Conclusion

It is necessary to emphasize the following points in the debate about what should be Turkey's new government system choice:

(1) Although it has remained formal in many respects, Turkey's democratic experience renders the country more suitable for the parliamentary system. Its level of legal and sociological sophistication concerning political parties and its electoral system are not in line with the requirements of the presidential system (for instance, preferably two-round elections with narrow districts, and individual representation).

(2) Generally speaking, the parliamentary system is much more appropriate in terms of democratic political stability. The non-US examples have not demonstrated that the presidential system is favorable for the creation of a stable democracy. The academic literature is in overwhelming consensus that the adoption of the American system in other countries does not produce a similar success story and is not likely to do so in the future. However, it should be added that as local governments become strengthened, there may be an increase in the number of presidential system examples.

(3) Nevertheless, insofar as it abides by the following points, the path followed by Turkey in building a new constitutional order may be any of the parliamentary, presidential, semi-presidential and party-affiliated president systems:

   (a) Adopting all international standards concerning basic rights and liberties without compromises or reservations.

   (b) Making it a principle of basic constitutional organization to recognize decentralization and the legislative power of local government units (regions, provinces and smaller administrative units).

   (c) Implementing judicial independence from political rule fully in accordance with the principles of judge security and the natural judge.

(4) If the choice is made in favor of the parliamentary system, options are (a) to abolish all power of the president and form a symbolic presidential office without authority and responsibility and (b) to create a popularly elected presidential office with both authority and responsibility in the domain of foreign affairs as in the example of Finland. In any case, under the parliamentary system, the president should not continue to have his bizarre position of "authority without responsibility."

(5) If the choice is made for the presidential system,

(a) It should be stated clearly that the power of the president as executive body is limited to the execution of law, and that the president cannot make regulations in legally unregulated areas.

(b) The president and the legislative body should have different electoral cycles.

(c) The legislative body should have two houses, and the legislative body (the Senate) in which regional or provincial governments are represented by equal numbers of members should check and approve executive procedures by the president.

(d) A two-round electoral system without a threshold should be arranged in such a way as to allow for narrow districts and individual representation, and political parties should be restructured so as to weaken the party discipline.

(e) The legislative and executive branches should not be allowed to dismiss each other or to make decisions regarding each other's election.

(f) Insofar as it remains loyal to basic rights and liberties, the Senate should be the ultimate decision-making and approval authority regarding whether a declaration of a state of emergency is needed.

(6) If the ultimate choice is made in favor of the semi-presidential system or the "party-affiliated president," which will practically bring about the same outcome as the former, conditions a, b and c mentioned above concerning the presidential system still apply. In addition, the power of the president and the legislature to dismiss each other should be brought under regulation. However, when we consider other cases from around the world, it is necessary to note that Turkey should not shift to such a system where the president and the prime minister share the executive power.

(7) In any case, it is essential that Turkey's new constitutional order establish structures in which regional or local bodies effectively share the powers of the central state bodies, especially the legislative power; the public can directly and effectively participate in political life; individualized preferences are respected and political rule is checked and balanced by an effective opposition. For this reason, the new constitutional order should definitely incorporate regional or local assemblies which have legislative power; a new electoral system which takes into account individualized preferences at the national and regional/local level; procedures of "direct democracy within a representative system" such as the ability of citizens to propose legislation based on a certain set of criteria; the recognition of the power of the general public to withdraw members of the legislative body; and legislative processes which operate with strong committees carrying sufficient power to balance the majority of the rulers in power in the legislative bodies at the national and regional/local level. If these conditions are met, then the possibility of deviations from the principles of a democratic constitutional state will be minimized, regardless of the ultimate governmental system choice.

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