

A CONSTITUTIONAL APPROACH TO THE COUP AND INVASION ATTEMPT IN JULY OF 15TH IN THE CONTEXT OF THE RELATIONSHIP THE GOVERNMENT SYSTEM WITH ANTI-DEMOCRATIC INTERVENTIONS IN TURKEY

TÜRKİYE'DE ANTI-DEMOKRATİK MÜDAHALELER İLE HÜKÜMET SİSTEMİ İLİŞKİSİ BAĞLAMINDA 15 TEMMUZ DARBE VE İŞGAL TEŞEBBÜSÜNE ANAYASAL BİR YAKLAŞIM

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ABSTRACT

The fact of unstable, powerless and weak democratic governments caused by the coalitions, which has become a natural feature of the parliamentary system with its double-headed structure and potential for conflicts, in addition to the inherent legislative-executive nature of the parliamentary system that cannot provide separation of powers, is lying under the political basis of Turkish coupling practice, which has been manifested itself with the latest July 15th coup d'état and occupation campaign. Turkey has witnessed direct and indirect coup d'état of military, bureaucratic and juristocratic centers of tutelage, which is almost inevitable to grow on such a politically chaotic and slippery ground. Behind these centers of tutelage, FETO is a more insidious and dangerous top center of tutelage which has designed and used them for his own purposes and has taken over the state. In response to the coup, civil war and occupation on July 15th, 2016, the reform of the political system has become inevitable. This reform was made with the initiative of the people for the first time in the history of the Republic. The main axis of the amendment of the Constitution adopted with a referendum on April 16, 2017 is the transformation to Turkish type presidential system of the existing government model on the ground of the democratic political system.

Keywords: Government System, 15 July Coup Attempt, Turkish Presidential System, Tutelage, Constitution Referendum.

ÖZET

En son 15 Temmuz darbe ve işgal teşebbüsüyle kendini gösteren Türk darbecilik pratiğinin siyasal temelinde, parlamenter sistemin, kuvvetler ayrılığını sağlayamayan iç içe geçmiş yasama-yürütme olgusuna ilaveten, yürütmenin, kendi içinde çatışma potansiyeline çanak tutan çift başlı yapısı ile parlamenter sistemin adeta doğal bir özelliği haline gelen koalisyon hükümetleri sebebiyle ortaya çıkan istikrarsız, güçsüz ve demokratikliği zayıf hükümetler olgusu yatmaktadır. Böylesine siyasal kaotik ve kaygan bir zemin üzerinde yeşermesi ve büyümesi, adeta kaçınılmaz olan askeri, bürokratik ve jüristokratik vesayet odaklarının doğrudan veya dolaylı darbesine veya darbe teşebbüsüne şahit olan Türkiye'nin, bu vesayet odaklarının da arkasında, onları dizayn edip, kendi amaçları doğrultusunda kullanacak kadar devleti ele geçirmiş olan daha sinsi ve tehlikeli bir üst vesayet merkezi olarak FETÖ'nün, 15 Temmuz 2016'daki darbe, iç savaş ve işgale yönelik teşebbüsü karşısında, daha fazla gecikmeden Cumhuriyet tarihinde ilk kez halkın inisiyatifıyla yapılan siyasal sistem reformunu hayata geçirmesi kaçınılmaz olmuştur. İşte, 16 Nisan 2017 tarihinde yapılan referandumla kabul edilen Anayasa Değişikliği'nin ana eksenini, demokratik siyasal sistem zemininde, mevcut hükümet modelinin, Türkiye tipi bir başkanlık sistemine dönüştürülmesi oluşturmaktadır.

Anahtar Kelimeler: Hükümet Sistemi, 15 Temmuz Darbe Teşebbüsü, Türk Başkanlık (Cumhurbaşkanlığı) Sistemi, Vesayet, Anayasa Referandumu.

1. INTRODUCTION

Considering the history of Turkish democracy, since 1950, Turkey has not gotten any foothold in order to establish uninterrupted democratic life. In the meantime, democracy has been extremely exposed to attacks and impacts and therefore the concept of democracy has been injured. It is seriously difficult to keep tally of military coups and attempted coups which have occurred in Turkey since 1950. Turkey has witnessed direct and indirect coup d'état of military, bureaucratic and juristocratic centers of tutelage, which is almost inevitable to grow on such a politically chaotic and slippery ground. In response to the coup, civil war and occupation on July 15th, 2016, the reform of the political system has become inevitable. This reform was made with the initiative of the people for the first time in the history of the Republic.

After the adoption of the 2007 amendment of the Constitution, including the election of the president by the people and the implementation of this election in 2014, Turkish government system has stepped out of the parliamentary system and actually stepped into the semi-presidential model. However, the double-headed structure of the executive in the semi-presidential system, certainly has the potential to invite a conflict, not now but in the future. In order to eliminate the risk of a possible legislative-executive conflict, which is also revealed by the election results of June 7, 2015, it is necessary to step in the presidential system fully. Therefore, the amendment of the Constitution on April, 16, 2017, aimed at changing the existing government

model, which is ineffective, slowly functioning, and a dish to the coalition governments, which is always open to the impact of any kind of tutelage lead to a coup d'etat.

2. PREVENTABILITY OF ANTI-DEMOCRATIC INTERVENTIONS IN TERMS OF GOVERNMENT SYSTEMS

It is known that all the anti-democratic interventions that have resulted in the political life of Turkey have led to instability of the government and the democratic regime. However, it should be noted that it is difficult to establish a direct relationship between these military coups and government systems. Because government coups can be seen not only in countries where the parliamentary system is implemented, but also in countries governed by the presidential system. Some countries, especially in South America or Africa, which are governed by a presidential system, can be given as an example to this situation. For example, military coups took place in Argentina in 1930, 1943, 1955, 1962, 1966 and 1976.¹ In other words, it stands before us as a political reality in which military coups are frequently experienced in countries where the presidential system is implemented. However, since the executive power in the Presidential system is stronger because it is single-headed and derives its legitimacy directly from the people, it is possible to say that the Presidential system is in a relatively more advantageous position against the parliamentary system in terms of non-democratic interventions. In this regard, it should be noted that there was no political instability in Turkey, especially as a result of the military ultimatum known as the e-memorandum in 2007 and the coup attempt in 2016. On the basis of the lack of instability, it should be noted that although the presidential system was not adopted at that time, the presence of a strong government in power and the fact that the executive was working as if it were alone. More precisely, it should be stated that the chance of any anti-democratic intervention, such as military coups, to achieve its purpose, is considerably weakened in the face of strong governments in a country. This situation indicates the existence of a serious problem in the implementation of the parliamentary system in countries where military tutelage is active. In other words, in countries where military tutelage is effective, preferring government systems with a stronger executive rather than multi-party parliamentary systems that lead to weak coalition governments may make serious contributions to the strengthening of political stability. In countries where military coups, also called non-democratic interventions, are seen, it is seen that the pretext of those who believe in the legitimacy of this intervention is rather social, political and economic turmoil.²

It has been observed that the instability of the government and regime caused by non-democratic interventions in Turkey affected our country very negatively in socio-economic terms and laid the groundwork for anti-democratic interventions, as seen in 1960, 1971 and 1980. In other words, it is possible to say that there is a mutual effect-reaction relationship between military coups and political instability in the form of laying the groundwork for each other. All these negative situations in the spiral of anti-democratic interventions and political instability have caused the government system in Turkey to be questioned. These inquiries, which acted on the fact that the government model applied during all these coups period was the parliamentary system, frequently referred to the presidential system as an ideal government model for Turkey, with the effect of the need for a stable and strong administration. In this context, as a result of the discussions on the change in the government system that started in the 1980s, the parliamentary system, which was criticized for weak and unstable governments caused by coalitions, was passed to the Presidential system, which is a Turkish-specific form of the presidential system, in which the executive is much stronger and more stable. It is seen that the most important reason for this change in the government system is the fact that parliamentary system practices lead to long-term government and regime instability in Turkey.³

3. A GENERAL PERSPECTIVE FOR MILITARY COUPS AND THE 15 JULY INVASION

In 27 May 1960, the “disorganise coup” which was performed by a junta including 38 junior officers, was followed by the 12 March 1971 Memorandum that was also performed by the soldiers who made pressure on politicians to overthrow the government.⁴ Following this, the 12 September 1980 military coup that was performed by applying the complete military hierarchy system, has caused traumatic problems in Turkey for

¹ Gözde Müşerref Gezgüç / Turgay Uzun, “Arjantin Siyasi Tarihinde Askeri Darbeler”, *Ekonomi ve Yönetim Araştırmaları Dergisi*, C: 6, S: 2, 2017, s. 150.

² Governments in developing countries that cannot maximize the confidence or well-being of society; In other words, governments that are seen as unsuccessful in the eyes of the society cause social, economic or political chaos, and the existence of these social, economic or political chaos prepares the ground for non-democratic interventions. Murat Akçakaya / Abdulkadir Özdemir, “Cumhurbaşkanlığı Hükümet Sistemi ve Siyasal İstikrar”, *Üçüncü Sektör Sosyal Ekonomi Dergisi*, 53 (3), 2018, s. 936.

³ Akçakaya / Özdemir, *a.g.m.*, s. 942.

⁴ Şükrü Karatepe, *Darbeler, Anayasalar ve Modernleşme*, İz Yayıncılık, İstanbul, 1993, s. 217 vd., 240 vd.

years.⁵ Further, in 28 February 1997, the post-modern coup which was particularly named as “February 28 will last 1000 years” was performed and this coup negatively affected to particularly the conservative part of the society.⁶ Furthermore, in 27 April 2007, the electronic memorandum, that aimed to prevent someone who has a kerkchiefed wife for becoming the president of the republic, was issued;⁷ however, this attempted memorandum was ruled out by the stable AKP government. The coup attempts however continued in Turkey and in June 2013 Gezi Park Protests and the 17-25 December 2013 police-judiciary junta⁸ were carried out by some part of the society who desire turn the Turkey into a government that is ruled by a military tutelage. Recently, in 15-16 July 2016, a terrorist attacks were carried out by FETÖ/PDY (a terrorist organisation) in Turkey. These terrorist attacks, in July 2016, were held by a part of the military and became worse situation than a military coup, because these attacks can be possible read as systematic terrorist actions which could drive the country to despair. Nevertheless, Turkish people, who have remained passive until that time, applied *the Right to Resistance*⁹ and therefore did not accepted to become a figurant of a scenario which was created by viper’s nests of domestic and foreign powers. Ultimately, Turkish people defeated this invasion.¹⁰

The 15 July systematic terrorist attacks were not a simple attempted coup. It can be interpreted as collective attacks that would open a way for an extensive invasion operation.¹¹ The General Assembly, which represents the national will, was not bombed by coup plotters and enemies when it was occupied by enemies after the Treaty of Sevres and further after the 1960 and 1980 coups. The coup plotters in 1960 and 1980 tortured and committed murder but they did not attempt to assassinate to a president or prime minister; they did not bombed government agencies; and they did not attack to civil people by using military vehicles.

The mastermind of FETÖ/PDY¹² failed invasion operation, in 15 July, showed itself by declaring “Our Men Succeeded” when this mastermind achieved the 1980 coup. Same mastermind, at that time, said that they did not have any relation to this coup when the coup failed.¹³ Therefore, Turkish people as a defender of the country protected the country, democracy, and the president accepted as a real leader by public against enemies by employing inherent incentive. Further, this people stood as a deterrent force against enemies who have plans to split the country by being on duty for protecting democracy and homeland. As is known, after the November 2015 Paris terrorist attacks, most of presidents and prime ministers attended the demonstration march for condemning terrorism in Paris; however, those presidents and prime ministers did not visit Turkey to declare their own condemnations for terrorist attacks and this situation demonstrates that they are not truthful and sincere allies of Turkey.¹⁴ In 2003, the junta governed by Sisi in Egypt was not described as a coup and was not condemned by Western states; for this reason, it cannot be expected that those states would condemn the failed coup attempt performed in Turkey. These attitudes of USA and EU show that Turkey becomes a complete independent country and diverts its route from signed route by Western states. Namely, Turkey rejected becoming an equerry of the USA and EU and further developments in the field of technology, economy and defence industry of Turkey were alleged as pretext to maintain control of Turkey. The failed coup and invasion operation in July 15th demonstrated the extent of nerviness to invade Turkey. Defeating coup and invasion operation FETÖ/PDY¹⁵ which is used someone as a tool shows that old Turkey no longer exists and new term of Turkey just started and was announced to all world.

⁵ Karatepe, a.g.e, s. 245 vd.

⁶ Mustafa Erdoğan, 28 Şubat Süreci, Ankara, 2000. Murat Sevinç, Anayasa Yazıları, 2. Baskı, İmaj Yayınları, Ankara, 2011, s. 311 vd.

⁷ <http://www.darbeler.com/2015/05/18/27-nisan-e-muhtirasi/> (Date of access: 12.11.2020).

⁸ Hasan Alparlan, Hedefteki Erdoğan Cemaatin Emniyet Yargi Cuntasi Eliyle 17-25- Aralik Darbesi, <https://simgedergi.wordpress.com/2016/07/28/hedefteki-erdogan-cemaatin-emniyet-yargi-cuntasi-eliyle-17-25-aralik-darbesi/12.03.2017>. Tamer Korkmaz, ABD+FETÖ+Doğan, <http://m.yenisafak.com/yazarlar/tamerkorkmaz/abdfeto-dogan-2035507?n=1>, (Date of access: 12.11.2020).

⁹ Look at for more information about “*the Right to Resistance*”: Ömer Ömeroğlu, Direnme Hakkı, Meşruluğu ve Pratik Değeri, EÜHFD, C. XIII, S. 1-2, Erzincan, 2009, ss. 103-115.

¹⁰ TCCB, 15 Temmuz Darbe Girişimi ve Milletın Zaferi, <http://www.tccb.gov.tr/assets/dosya/2016-09-22-15temmuz-tr.pdf>. (Date of access: 22.11.2020).

¹¹ Ersin Ramoğlu, Türkiyeyi İşgal Planını ABD Hazırladı, <http://www.sabah.com.tr/yazarlar/bolgeler/ramoglu/2016/07/28/turkiyeyi-iscal-planini-abd-hazirladi>. (Date of access: 12.12.2020).

¹² E. Emrullah Berkkan, “Üst Akıl ve Fetö” Darbenin Gizli Kodları, Eftalya Yayınları, İstanbul, 2016.

¹³ Merve Şebnem Oruç, Sizin Çocuklar Bu Kez Başaramadı, <http://www.yenisafak.com/yazarlar/mervesebnem-oruc/sizin-cocuklar-bu-kez-basaramad%C4%B1-2030898>. (Date of access: 18.11.2020).

¹⁴ Hacı Mehmet Boyraz, 15 Temmuz Sonrası Türkiye AB İlişkilerinin Geleceği, <https://www.setav.org/15-temmuz-sonrasi-turkiye-ab-iliskilerinin-gelecegi/>(Date of access: 22.11.2020).

¹⁵ Look at for more information: Selim Çoraklı, Darbelerin Efendisi: HOCIA, Eftalya Yayınları, İstanbul, 2016. Sabahattin Önkibar, Mehdinin Darbesi-Eşikteki Kıyamet, 3. Basım, Kırmızıkeci Yay., İstanbul, 2016.

4. THE CONSTITUTIONAL FRAMEWORK OF IMPLEMENTATION AND DECISION OF THE STATE OF EMERGENCY AFTER JULY 15

After the 15 July failed coup attempt, the state of emergency was issued in 23 July and this situation was criticised by asserting unwarranted reasons in both national and international capacity. Whereas, after the terrorist attacks in Paris, the French Government issued the state of emergency and extended it for 6 months; however, neither at national capacity of France nor international arena reacted this situation.¹⁶ 248 people martyred and more than 2200 people was injured after this collective attacks including attacks on the presidential palace, Ankara police building, special forces command and national security organisation. Further, they attempted to assassinate the president and prime minister. And those attacks were more violent than attacks occurred in Paris. Considering those martyred and veterans, all critics and expostulations for the state of emergency issued by the government based on Article 120 of the 1982 Constitution are nonessential.¹⁷ As stated in Article 122 of the Constitution, the reasons of “*the spread of violent and strong rebellious actions against the motherland and the Republic, or widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation*” actually occurred in 15-16 July. For this reason the government could decide declared a state of siege; however, the government issued, by applying Article 120 of the Constitution, the state of emergency which can be accepted as lighter and easier precaution. Arguing against this decision is not conscientiously discourse.

5. A LEGAL ANALYSIS: REQUESTS AND EXPECTATIONS FOR EXECUTION BY PUBLIC

After the failed coup attempt in July 15, people uttered their expectations for execution during the *Democracy Watches*. To make progress for adopting the death sentence, this penalty in the first place should be attached to the 1982 Constitution through amending the current constitution and subsequently, the death sentence should be added to the Turkish Criminal Law as a penal sanctioning. It is a different contention whether the death sentence should be applied to the coup plotter perpetrators of the 15 July failed coup. People, who continue discussing aforementioned issues together, claim that the principle of non-retroactivity of laws does not allow to apply this amendment to the 15 July coup plotters. In this sense, considering Article 15(2) of the Constitution and the principle of non-retroactivity of crime and punishment, it is asserted that the death sentence cannot be applied to those coup plotters;¹⁸ however, there is no common accord in public opinion and this assertion fails to satisfy people.

In fact, it cannot be claimed that aforementioned universal principle would be violated by applying the death sentence to the coup plotters; because, it is not a finished and instant crime; on the contrary that, it can be described as on-going crime. It cannot be claimed that the terrorist attacks including the 15 July failed coup ended in Turkey. After the July 15, other terrorist organisations by establishing attack coalitions with FETÖ/PDY continue their terrorist attacks. Namely, initiated crime attacks have not finished yet and are conducted by applying different methods.¹⁹ At this point, it must be done that the death sentence should be added to the constitution as soon as possible and should include a temporarily provision which declares that the death sentence can be applied for the coup plotters of 15 July. As is known, this kind of amending would create serious reactions and exclusions from the European Union. Taking this serious risk should be worth adopting death sentence; therefore, this death sentence would not have any meaning unless it applies for aforementioned coup plotters.

6. CONCLUSION

After the adoption of the 2007 amendment of the Constitution, including the election of the president by the people and the implementation of this election in 2014, Turkish government system has stepped out of the parliamentary system and actually stepped into the semi-presidential model. However, the double-headed structure of the executive in the semi-presidential system, certainly has the potential to invite a conflict, not now but in the future. In order to eliminate the risk of a possible legislative-executive conflict, which is also revealed by the election results of June 7, 2015, it is necessary to step in the presidential system fully. The amendment of the Constitution on April, 16, 2017, aimed at changing the existing government model, which is ineffective, slowly functioning, and a dish to the coalition governments, which is always open to the impact of any kind of tutelage lead to a coup d'etat. This amendment of Constitution certainly does not

¹⁶ <https://tr.sputniknews.com/turkiye/201607261024105108-avrupa-konseyi-ohal-turkiye-elistiri/> (Date of access: 02.12.2020).

¹⁷ Cem Duran Uzun, 15 Temmuz Darbe Girişimi Sonrası Olağanüstü Hal İlanı ve Sonuçları, <https://setav.org/assets/uploads/2016/07/138.-perspektif.pdf>. (Date of access: 22.11.2020).

¹⁸ <http://www.diken.com.tr/akpli-sentopa-gore-idam-15-temmuz-icin-mumkun-degil-ikincisi-olursa-uygulanir/> (Date of access: 24.11.2020). Selin Girit, Türkiye İdam Cezasını Geri Getirebilir mi?, <http://www.bbc.com/turkce/haberler-turkiye-36831898>. (Date of access: 17.11.2020).

¹⁹ <http://www.milliyet.com.tr/idam-icin-devam-eden-suc-formulu-gundem-2283389/> (Date of access: 19.11.2020).

include a provision to change the Turkish political system that can be summarized on the axis of republic, democracy, secularism and unitary structure. *Turkish Presidential System*, which is the Turkish version of the presidential system, is a model of government of representative democracy, like parliamentary and semi-presidential government systems. It can even be said that the democratic level of the presidential system is higher than others, because of the election of the executive by public, the clarity of the form of government and the accountability of the president directly to the public. To sum up, the transition of the executive from two-headed structure to stand-alone and the gathering of executive powers at the presidency is just a choice of government model, not a conversion to an antidemocratic regime. In other words, *Turkish Presidential System*, which has gained momentum with the influence of July 15th, will lead to the management by more powerful, democratic and stable governments, which will shut the doors to the possibility of any kind of coup, as well as having the potential for accelerating the material and the spiritual development and breakthrough of the country.

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