https://doi.org/10.55843/ivisum2272065e

# HYPER PRESIDENTIALISM AND FIRST YEAR OF THE TURKISH TYPE OF PRESIDENTIALISM

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## ABSTRACT

The new government system of Turkey can be described as hyper-presidentialism, this is because the president then becomes the arbiter of all powers. In another word, the power to enact decrees, appoint bureaucrats and judicial officials into offices, and the power to dissolve a parliament belongs solely to the president. As strong presidency fuse with disciplined party system as well as concurrent elections and 10 percent electoral threshold, the president possibly poses a great danger to the separation of powers. Additionally, with regards to the presidential term, the president constitutionally holds the power to be elected only for two terms in Turkey. However, Erdoğan and his supporters believe that the 2017 constitutional amendments that changed the system of government has reset the agenda. Thus, the 2017 amendments offered Erdoğan a secret opportunity to join the presidential election race for a third, and even a fourth term.


**Keywords:** Hyper-presidentialism, Turkish presidentialism, Presidential decree, concurrent election, Erdoğan's term limit, Turkish government system

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**UDK:**
342.511(560)"2022"

**Date of received:**
08.06.2022

**Date of acceptance:**
13.08.2022

**Declaration of interest:**
The authors reported no conflict of interest related to this article.

## Introduction

The 2017 referendum in Turkey sired the acceptance of a new system of government. As a result of this choice, the parliamentary system which had been in place for 95 years was replaced by a kind of monist government system. Turkey's ruling party for 17 years, Justice and Development Party (Adalet ve Kalkınma Partisi, AKP), and its members have defended the new Turkish type of presidentialism which has a strong, turbo presidency against the parliamentarism (Tecimer, 2019). They alleged that this system of governance would be an invention of Turkey in which they described as *Presidentialism of the Republic (Cumhurbaşkanlığı Hükümet Sistemi or Cumhurbaşkanlığı Sistemi)* (Gülener and Miş, 2017). According to a report by Hurriyet Daily News (2015), president Erdoğan in the Governors Meeting of February 2015 stated that *"With the skillfulness of a bee, let's gather our share from flowers and then turn it to honey."* Furthering this narrative, *"he noted that they would eventually form an "authentic presidential system framed by Turkish customs and traditions".*

In the whole build up to the referendum and the eventual transition to the new system of government, there is no doubt whatsoever that Erdoğan and his supporters were right on their avowals that Turkish system is not a pure presidential system like the USA presidential system. However, it will be wrong to dismiss the truism that lies in the fact that the system is an "authentic" one. The new government structure is presidentialism, one can observe this fact in the countries of Asia, Africa, Latin America and East Europe, and, that the president dominates the legislature and judiciary. Drawing from this perspective, Özsoy (2016) asserted that the Turkish government system is a form of hyper-presidentialism. In June 2018, Turkey experienced the concurrent elections first time within our policy practice. After the 2018 elections, the new system came into force in July 2018. This essay observed the outputs of the first year of the new system of government. To analyze the outputs of the system, the study focused on the formal and informal powers of the president and the second section analyzed the president's formal powers.

In compliance with the purpose of this study, empirical data about Presidential Decrees*(hereafter PD)* which have the force of law and presidential appointment orders (Cumhurbaşkanlığı atama kararı) with

regards to Erdoğan's first year (July, 2018 – July, 2019) were collected, after which the usage of PDs were investigated. The study observed that the president produced policy by means of PDs more than the parliament did. Additionally, during that period, the origin of the important part of the laws which the Grand National Assembly of Turkey (Türkiye Büyük Millet Meclisi, TBMM) enacted is the executive branch even if the president does not have to propose the bill. Even so, the president can compensate this deficiency because of his informal powers. One can count the informal powers as proportional to the electoral system, concurrent election, 10 percent electoral threshold, and the disciplined party system of Turkey. Bringing all these measures to mind, there is no doubt that a president can have a meaningful majority of parliament either his/her party or his/her coalition. Based on the foregoing, the study analyzed the president's informal powers in the third section. It is important to mention that the work of Özsoy (2016) lent credence to the results of the second and third section of this study.

In reality, Turkish political system is democratic but because of some non-formal situations, Erdogan cannot be defeated electorally. Nevertheless, as a conclusion of long-time leadership, the system can be converted to a kind of *big-man rule* (Hyden 2006, 94), particularly, within the post-2017 period. However, it is unclear how long Erdogan will stay in office. Consequent on this, there remain a lot of concerns that require clarification, one of which is the problem of whether Erdoğan's first presidency period (that is, between 2014 to2018) should be counted for the new system or not. Additionally, article 116 (3) of Turkish constitution regulated that "If the Assembly decides to renew the elections during the second term of the President of the Republic, he/she may once again be a candidate." This rule, together with previous controversial issue, offers Erdoğan a secret opportunity for running the presidential elections for a third and even fourth term. If these two scenarios become a reality, Erdogan can remain in office till 2032. For this reason, this study in the fourth section examined the situation of freedom and democracy in Turkey and the continuity of Erdogan's leadership.

## I. Theory of Hyper Presidentialism

In 1994, Guillermo O'Donnell categorized some Latin American democracies as "delegative democracy". The Author used this pattern for countries that accepted a new constitution, non-institutionalized after

post-autocratic regimes (O'Donnell, 1994, p. 62). Nevertheless, he categorized the countries as democratic regimes in conformity with Robert Dahl's measures (O'Donnell, 1994, p. 56). However, in these regimes, since the elected presidents can do everything – to the extent of the power-relations (O'Donnell 1994, p. 59), until the next election, the regimes are majoritarian democracies but more or less liberal one (O'Donnell 1994, p. 60). The prominent feature of this regime is the fact that a president elevates himself/herself to a superior position over the parliament and judiciary because the president is elected from the national constituency, while legislators represent only a part of voters. Other horizontal accountability mechanisms such as Congress and the Judiciary are nuisances for the president (O'Donnell 1994, p. 60).

Hence, whether the president has majority of parliament or the majority belongs to the opposition party, the opposition lacks the ability to prevent the president from realizing his/her policies, thus, creating a government structure where whoever wins the presidency claims entitlement to govern as he/she sees fit (O'Donnell 1994, p.59). It does not matter whether the president garners support from the majority of parliamentary or not. Consequently, one can easily say that the president executes the policies by PDs. Already, on the contrary, presidents tend to expand their decree authority despite existing constitution (O'Donnell 1994, pp.59-62). As a result, presidents enact policies fast and immediately implement them.

In the same train of thought as enunciated by O' Donnell (1994), Larkins (1998, p.56) explains hyper-presidentialism as an extreme point of delegative democracies. In fact, Larkins noted that hyper-presidentialist regimes have check and balance mechanisms. For instance, parliament does not have a mere reactive position on paper; as a matter of fact, the opposition parties can control the parliament (Larkins 1998, pp63-66). Even so, presidents can dominate the parliament by decree power, full or partial veto power and referendum power to mention but a few. In a different narrative from (Larkins, 1998), Rose-Ackerman et al. (2011) posited that parliaments are weak as a result of immaturity of opposition parties or unimproved institutional understanding. Nonetheless, presidents desire the parliaments that supports their personae and administration as well as a parliament that goes even further to affirm legitimacy of their (president) actions or inactions. The judiciary on the

third hand of the 'tripartite design' (i.e. executive, parliament and judiciary) is designated as a control mechanism to checkmate the president. According to Larkins (1998, 66-69), the judiciary has as its designative role the power to check presidents' political and economic decisions. Unfortunately, in countries where hyper-presidentialism is in practice, neither the judiciary nor the parliament has lived out its responsibilities in checkmating a president when understudied from an historical perspective. Historical antecedents have shown specifically that presidents who have over-shot their mandate by pitching tents in the corridors of power for too long a time are thus permitted to fulfill judicial responsibilities.

On the contrary, presidents, most likely, are able to provoke judicial constrains (Rose-Ackermanet. al. 2011, p.246). That is why judiciary, specifically Constitutional Court or Supreme Court, would restrain itself gradually or lose legitimacy. On the legitimacy of the judiciary, Bernal (2013, p.351) painted a vivid picture when he expressed that if presidents have the power to appoint judges of the Supreme Court and other judicial supreme bodies cum offices, in the event that the president remains in power for a long time, the judiciary would start to obey the orders of the president and lose its independency. In other words, the judiciary becomes a 'toothless bulldog.' The described pattern of the system is only an overview of the game area. Worthy of note is that the difficulties in constraining a president can exist in any presidential system including that of the USA (Rose-Ackermanet. al. 2011, p.249) because that check and balance mechanism falls short. In the spirit of emphasis, this study attempts to establish an institutionality of the pattern for hyper-presidentialism in order to apply this pattern in the case of Turkey.

Therefore, the common powers that all presidents have and the advantages they benefit in the hyper-presidential systems should be detected. This line of thought prompted the inclusion and utilization of Özsoy's (2017, pp.175-177) criteria relating to hyper-presidentialism for this study. Firstly, a president or presidential candidate often wants to make sure he/she gains the support of the parliament. This support can come from any political party, not necessarily that which the candidate belongs and pledges allegiance to. Nonetheless, before joining the electoral race, a presidential candidate could establish an electoral/governmental alliance. For the purposes of stability and sustainability, this alliance should be in

a manner where the said candidate gets majority of the parliament into his/her camp as this would hold simultaneously both the presidential and parliamentary elections as a useful tool. Thus, a median voter would think that parliamentary and presidential candidates of same party/alliance are parts of the same team. Usually a median voter would vote for parliamentary candidates of the same party/alliance with the presidential candidate (Shugart 1995, p.30; Samuels and Shugart, p.2010 128; Molina 2001, pp18-19). This is described as "unity of purpose" and it does not comply with classical separation of power that presidential and parliamentary election is different, as such, there is *"separation of purposes"*( Erikson, 1988; Samuels and Shugart 2003).in spite of this, Mainwaring and Shugart (1997, p.410) posited that a president can have a friendly parliament easily.

According to a study by Barragán (2015, pp.214-216), a president have simple majority of parliament with 83% if the president is elected by absolute majority of voters and concurrent elections are held. This possibility is 62% in countries where elections are held on separate dates. However, what is interesting about this is that if focus is on the absolute majority of parliament, yields of the concurrent elections are more highlighted. While the president cannot get more than 50% support of parliament in countries where elections are held on separate dates for presidential and parliamentary, the possibility is 35% in countries where presidential elections with absolute majority and parliamentary elections hold on the same day (Barragán 2015, p.219). Electoral alliances should be encouraged in context of the preference on concurrent elections in multiparty systems. Otherwise, presidents will be minority in parliament since they cannot have stable executive coalitions and stable parliamentary majorities (Mejia-Acosta 2006, p.69, 71). If electoral alliance and concurrent election practices apply together, post-electoral coalitions would be more stable (Machado 2009, p.90). However, in systems with separate elections such as mid-term election of the parliament, parties of presidential coalition can leave from coalition with the aim of searching for more feasible position in the next election.

In the first situation, pre-electoral alliances would be transformed to post-election coalition and can continue as long as any problem is not experienced until the next elections (Amorim Neto et. al., 2003 pp. 563,

575-576; Mejia Acosta 2006, pp.69, 71; Power 2010, 226; Machado 2009, p.90). Furthermore, according to Borges and Turgeon (2017), the more the ideological proximity of the parties of an electoral alliance increases, more core coalition members will be utilized from the coattail effect of their presidential candidates. That is why, in a system that electoral alliances and concurrent elections apply together, a pre-electoral alliance can be counted as most likely post-election coalitions.

Secondly, the president does not take into consideration the position of parliament on significant political issues. To attain this feat of confidence, the president either has the decree power constitutionally (as with the case of Russia) or declares it as para-constitutional, like that of pre-1994 Argentina (Carey and Shugart 1998, p. 14).This therefore gives the presidents a free passage to regulate what e/she wants. In situation where the parliament is of an opposition party, the president in this case pitches the parliament against the people through of her/his decree using her/his popularity. In that case, the president benefits from his/her *first mover* position (Moe and Howell 1999, pp. 855-856; Mayer 1999, p.450; Cox and Morgenstern 2001; Amorim Neto et. al., 2003, pp.568-569; Calvo 2007, p.270; Figueiredo 2013, p.11). Consequently, the president publishes decrees that immediately come to force to change the existing status quo since he/she does not require any form of negotiation with other branches of government. Once the status quo is changed by the presidential decree, in order to revert the decree, and protect the old status quo, parliament must issue a new law that requires a presidential approval.

However, this action is not so easy. When a president establishes a new status-quo through a decree, a change in the new rule (law) destroys everything that exists. Unfortunately, many MP do not want to take up this responsibility (Moe and Howell 1999; Figueiredo and Limongi, 2000, p.155; Pereira et. al., 2005). Due to this, most of the fracas between the president and parliament end in favor of the president because of his "*first mover"* position. Interestingly, as long as presidents have popularity, parliaments either approve the decrees or keep mum (Ames 2002, p.164). Nevertheless, presidents do not just issue decrees except in cases where they have minority position. Even if a president has a stable majority in parliament, decree power is a useful tool for both the president and parliament. For the parliament, as a result of the weak opportunity, lack of resource and low expertise to investigate every issues diligently in

addition to the fact that a president can reach all of them easily, it is often considered more sensible to permit the president to issue the PDs (Reich, 2002, pp.6, 16; Özsoy 2016, p.13). Within this simulation, parliament and president have same ideology and political goals. Therefore, the parliament benefits from the executive expertise to make policy while it evades from work-load (Carey and Shugart 1998, pp17-18; Moe and Howell 1999, p.586; Pereira, et. al., 2005, p. 181).

From the preceding assertions it is becomes obvious that the President will be free from any form of opposition from the parliament while she/he publishes the decrees. As a result of this, it can be suggested that if the president has to issue PD constitutionally, he/she do could do so without hesitation. This is scenario is different from what is obtainable in a parliamentary system. In classical presidential system, the parliament approves bills while the president vetoes the bills and in the parliamentary systems, the executive branch proposes a bill to parliament and the parliament approves or vetoes it (Tsebelis 1995, p.325). However, in hyper-presidential regimes, president regulates decree and publishes it. At this point, the status quo becomes changed in which case the parliament either approves the bills or keeps mum. So, the fact that the decisions on legal issues are made by president, the decision-making process becomes toppled even if parliament, subsequently, would approve the bill openly or tacitly.

Thirdly, according to Özsoy (2017, pp.176-177), although it is rare, dissolution of parliament by president can be found in some hyper-presidentialist regimes. This rarity is because the power to dissolve a parliament is a typical feature of parliamentary system (Özsoy 2017, pp.176-177). Generally, as a response that the parliament has the power of remove the cabinet, the cabinet can demand from head of state the dissolution of parliament. The rule of the game about the ability to end power's life reciprocally necessitates the description of the parliamentary system as "*fusion of powers*" (Alder 1999, p.82; Barnett 2002, p.119). However, in hyper-presidentialism regimes, although formally the parliament does not have the power to remove the president from office, the president, in some cases, possesses dissolution power (Özsoy 2016, p. 15). Consequently, the presidents can evoke this power to align with his/her political desires. At this point, if parliament, even in rare cases,

takes an opposing position to the president, they can encounter threats of dissolution.

Fourthly, it highlights presidential appointment powers. Shugart and Carey (1992) gives the highest point to the government systems if the president is able to appoint their ministers without any confirmation or approval from the parliament, also if the parliament does not have to censure the ministers (Shugart and Carey 1992, pp.152-154). However, what this translates to is the president's dominance on appointments. If a president can freely appoint to important positions and the parliament does not have to conduct any check. This power according to Hyden (2006, p.94) converts the president to a big man. By virtue of this power, the president dominates both the executive and judiciary arms of government (Özsoy, 2016, p.16). Nonetheless, Kim (2013, p.530) revealed that presidential powers in certain areas such as appointment, foreign policy-making and government formation are relatively conflict-prone, therefore a strong president will have a domineering influence on polices in times of peace but becomes chief culpable person during crisis periods. As can be seen, generally, the issues investigated are transitional features of the system between presidentialism and parliamentarism or separation of power and fusion of power. When a president controls areas of parliament such as decision-making by decrees in addition to getting majority of parliament by concurrent elections, it creates a situation where the president operates without any problem. When parliament or judiciary try to check and balance the president, the president claims that the system has separation of power, as a result, the president defends him/her actions and argue against the imposition of check and balances initiated by other branches and institution (Rose-Ackermanet. al., 2011, p. 247).

Scholars claimed hyper-presidentialism is not a permanent but a temporary period (Larkins, 1998, pp. 62-68; Özsoy, 2016, p.8). It either fails to remain democratic and becomes autocratic or returns to delegative democracy at the extent of periodical power relations of branches (Özsoy, 2016, p. 8). The key point to detect transforming moment of a hyper-presidentialism to authoritarian regime is whether or not the president endeavored to *stay in office for third term or more* (Tull and Simons 2017, p. 93; Posner and Young 2018, pp. 267-268). Moreover, in the words of Baturo (2010), esteem to the term limits is a *litmus-paper of democracy.* If a system has an effective and applicable term limits for a presidential

term, this mechanism highlights serves as a measure to check the presidential acts (Bernal 2013, p. 251). Since a president already knows that they will leave office and relinquish their power at the expiration of their term in office, he/she would respect the principle of the separation of powers and civil rights in order to avoid future infringement charges due to their negative acts and decisions during their stay in office (Maltz, 2007). Additionally, by virtue of term limit for presidency, the incumbency of a president rarely coincide with the term limits of high ranking civil servants and judges of Supreme Courts. As a natural result, even if the president has strong appointment power for this positions, judicial independency and bureaucratic professionalism are provided spontaneously (See. The Judgement of Constitutional Court of Colombia**,** [2010], Sentencia: C-141/2010, *Title 6.3.6.1.1. La segundareeleccion y losperiodos de los altosdignatariosestatales).*

## II. President's Informal Powers: Concurrent Elections and Party Discipline

Most important informal power of president is support of TBMM. For this purpose, first and foremst, there is the need to examine the circumstances that makes possible a president-friendly majority within TBMM. The president is elected by absolute majority of voters. If any candidate obtains the absolute majority first round, the second round shall be held (Act. 101 of Constitution). Scholars claim that if the president is elected by a double-round electoral system, and if there would be multiparty system, it would be hard to get a presidential majority in the parliament[1]. In that case, a divided government is birthed. To overcome this problem in the case of Turkey, the country accepted the concurrent elections. AKP's constitution-makers like Karatepe (Karatepe 2017) clearly explained that making presidential and TBMM elections simultaneously aim to solve the "divided government problem" (Karatepe 2017, p. 34). As a result of the 2017 amendment, the first round of presidential election and TBMM elections were held on the same day. Due to this concurrency, it was observed that voters who prefer a presidential candidate, tend to vote for the presidential candidate's party or alliance.

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Members of TBMM are elected through of a proportional representation system with D'Hondt and a 10% national threshold (Yokuş, 2018, p. 11). However, this national threshold transforms the system to a type of majoritarian electoral system since the highest threshold of the world as highlighted by Hale (2008, p. 238) is a key factor in limiting both inter and intra party competition and, grants the larger parties to have parliamentary overrepresentation in comparison to their actual votes (Ayan Musil 2015, p.78; Kabasakal 2019, p.179). Therefore, voters abstain from small parties so as not to waste their votes (Hale 2008, pp.238-239; Ayan Musil 2015, p.78). As a consequence of this, the electoral system therefore damages the small parties and yields electoral disproportionality. Due to the 10% national threshold, even if party fragmentation does not reduce, effective party number in TBMM overtly reduces. This threshold is one of the causes of AKP's becoming the dominant party in Turkey since 2002 (Gümüscü 2013, p.229-230; Ayan Musil 2015, p.78). However, instead of reducing 10% threshold, Turkish constitutional engineers melted electoral threshold and concurrent elections within the same pot. They also aimed to benefit from other sides of the concurrent election practice: stable electoral/post electoral alliances.

For this purpose, prior to 2018 elections, electoral alliances were encouraged by a law that if parties organize an electoral alliance in parliamentary elections and the sum of the votes cast for alliances were more than 10%, it would be accepted as if every party in the alliance surpassed the threshold (Hale 2008, p.236). In line with this, specific ruling parties like AKP and MHP formed an alliance aimed to draw support of all parties which had concerns about passing the threshold (Yokuş 2018, p.18). In 2018, for the first time in Turkey, TBMM elections and the first round of presidential elections were held simultaneously. Two essential alliances participated in the elections. On one side, there was *Cumhur İttifakı* (Public Alliance). This alliance was formed by AKP and MHP (National Movement Party). The presidential candidate of Cumhur İttifakı was the incumbent president, Erdogan. In reality, the both partners in the coalition were right-wing and coherent parties (Miş and Duran 2018, p.30). These partners exploited Erdoğan's coattail effect maximally. On the other side, there was *Millet İttifakı* (Nation Alliance); this alliance was formed by *CHP* (Republican People Party) and *İP* (Good Party). The alliance had separate presidential candidates who participated

for the first round of presidential election to take advantage of the *coattail effect* (Tavits 2009, pp.141-142). In addition to these alliance, the Kurdish Party, *HDP* (People's Democracy Party), participated in the elections without been included in any alliance.

As a result of the forgoing this study investigated the presidential and TBMM elections between 2014 and 2018. The justification for choosing this period was because it was during this period that the two separated elections and concurrent elections were experienced. Furthermore, the study excluded the 1st of November, 2015 TBMM election and this was due to its exceptionality. The results are coherent with the reality of empirical studies.

***Figure 1: The Difference in terms of Electoral Successions of Presidential Parties Between Concurrent Elections and Separate Elections (2014-2018)***


As illustrated in Figure 1, concurrent elections gifted a stable majority support for Erdoğan unlikely the June 7, 2015 TBMM election which was held a year after the 2014 presidential election. Even though Erdoğan's AKP got the simple majority and even if it was a fewer majorities than 50%, the "Public Alliance" got an absolute majority of TBMM. Hence, the Turkish type of presidentialism, like those of countries in Latin American, Asia and Post-Soviet, has started to fuse legislature and presidency automatically.

Essentially, the division of the parties as a two block structure reflects the historical journey of Turkish policy based on center-periphery. The CHP and IP represent the secular part of the society and coastal provinces of

the country while AKP and MHP represent the conservative parts of the society, inner parts and center-Anatolian areas of the country. Due to the fact that Erdoğan's political acts are based on populism combined with this coalitional separation, a deepen cleavage that Kalaycıoğlu (2011, pp.1-22) nominated as Kultur kamphf, arose intensely. In all fairness, this deepen cleavage gave rise to stabilization of the political positions which the Erdoğanist majority of TBMM usually dominates the policy. Hence, the coalitions are built by parties transform to permanent and semi-obligatory collaborations after the elections. This phenomenon is overtly seen if one observes the voting of TBMM's plenary sessions. Usually, CHP and IP vote as a block while AKP and MHP vote in the same way. For this reason, the Erdoğanist majority of TBMM always determines the results (Arabacı, 2019).

The majority support for presidential policies in parliament do not constitute danger for the system if the system has checks and balances between two branches. Specifically, members of the parliament *(hereafter MP)* can provide an independent future to themselves from the president. In this case, the MP can reflect their own will if need be against the presidential policies in which case, check and balances are established spontaneously. On the other hand, if the political future of MP belongs to their party leaders, their inner-parliament behavior is formed by their leaders. It is worth a mention that candidate selection procedure and quality of electoral system are important variants for the issue. As Shatterschneider (1942, p.64) observed, *"the nature of nominating procedure determines the nature of the party; he who can make the nominations is the owner of the party."* In line with this though, Siavelis and Morgenstern (2008, pp. 39-40) highlighted that, at the time candidates are selected, the more the process is centralized, the more it produces candidates loyal to the party/leader. Similarly, district magnitude and list type are another variant on parliamentary loyalty. In closed-list proportional systems, even candidate with high qualities lose and this is due to the fact that the party becomes the main decisive actor on the nomination of candidates. In this systems, It does not matter whether candidates have reputation in his/her constituency or not. Voters make choice among parties but not candidates (Siavelis and Morgenstern 2008, 37-38).

In Turkey, both the closed-list proportional system and centralized candidate selection exists. For this reason, party leaders control their MP in terms of both candidate selection and election system. As a result of this, a median MP obeys the party leader's directives. The organizational model of the Political Parties Law in Turkey seems consistent with democratic principles since party leaders and executive committees are elected by party congress. Nevertheless, historically and at present, all parties display strong oligarchic tendencies (Ozbudun, 2000, pp.246-247; AyanMusil 2015, p.85). The fact that party leaders decide candidate lists of their parties makes it less likely to challenge the party leader's decisions (Kabasakal 2019, 182). A recent empirical research based on the June 12, 2011 and June 7, 2015 general elections showed that no change happened in this observation. For these elections, the party leaders decided who would be candidate in the general election after suitability assessments were made within the party (Dönmez, 2016, pp.210-213). Furthermore, Turkish political leaders rarely left the chairmanship (Özbudun p.2002, 247; Sayarı, 2002), this, according to Kalaycıoğlu (2013, p.487) reveals a lack of party institutionalization and makes the party leaders more prominent than their parties.

This hegemony and oligarchic structure is reflective in the actions of party members and MPs. As a result of this, it could be inferred that the part leader's control over their MP is form of full hegemony (Ayan Musil 2015, p.85; Kabasakal 2019, p.181). Also, it should not be forgotten that the president (Erdoğan) has been the leader of his party since 2017. In 2017 amendments, the rule that elected president who is a party member must resign from the party was removed. When a party leader with the party leader's full hegemony is associated with party leader being president, it is inevitable that the MP's will not be obedient to the president (Yokuş 2018, pp.14-15). The hegemony of president over MP's of his party and coalition can be explained bringing a more recent example into focus. The draft that permits the thermal power plants to operate without installing filter was approved by votes of the members of AKP and MHP. However, because the draft was strongly criticized by the public through their opinion as recorded on different media particularly, social media, the president and AKP leader Erdoğan vetoed this draft to satisfy public opinion (Hurriyet Daily News, 2019).

Subsequently, this draft was changed in TBMM commission to comply with the presidential veto in line with the criticisms and opinions of the public. So far, everything is normal. However, fascinating about this was that some of the MP's who proposed and approved the draft thanked and congratulated the president immediately after his veto decision aired on the social media at night[2]. This fact clearly shows that for the MPs, what is more important is to be liked by their party leader as well as sustain a good relationship with the president than their own parliamentary actions and responsibilities. The both nature of the electoral system which almost guaranteed the majority of TBMM by virtue of concurrent elections together with 10% national threshold and presidential hegemony over this majority as party leader reveals a dominant-presidential system clearly (Yokuş 2018, 14-15; Castaldo 2019, 479;).

## III. President's Formal Powers in the Turkish Type of Presidentialism

Presidential powers that transformed the Turkish type of presidentialism to hyper-presidentialism are president's law-making powers such as decree power and veto power to propose the budget bills as well as the appointment power to select people to positions like high-ranking executive officials and judges of TCC and CJP.

### Legislative Powers

In modern times, presidents have to be "chief legislators" as well as "chief executive" (Chasquetti 2011, p.10; Bulmer 2017, pp.3, 6). This therefore makes some particular periods such as periods of economic crisis or calamity a heavy responsibility for presidents. This is because, citizens, particularly those in delegative democracies, expect the president to act with urgency to solve problems when parliament does not take the responsibility to act urgently when it is needed. It is for reasons such as this that presidents, even if they do not have the constitutional power, can issue decrees which have the power and force of law to by-pass Congress. This scenario was witnessed in the action of the president of Argentina, Menem, in pre-1994 (Negretto, 2001, pp.94-95; Onainda 2009, pp.44-45). In contrast, a system that has powerful executive branch, the decree power can have a constitutional place as with the case of Brazil and Indonesia of

[2] Turkish Minute, "AKP deputies make U-turn after Erdoğan's veto of law on thermal power plants", https://www.turkishminute.com/2019/12/03/akp-deputies-make-u-turn-after-erdogans-veto-of-law-on-thermal-power-plants/, (10.12.2019).

the post-democratic transition (Power, 1998, pp.199-202; Negretto, 2001, pp.88-90; Etsi 2009, pp.272-276).

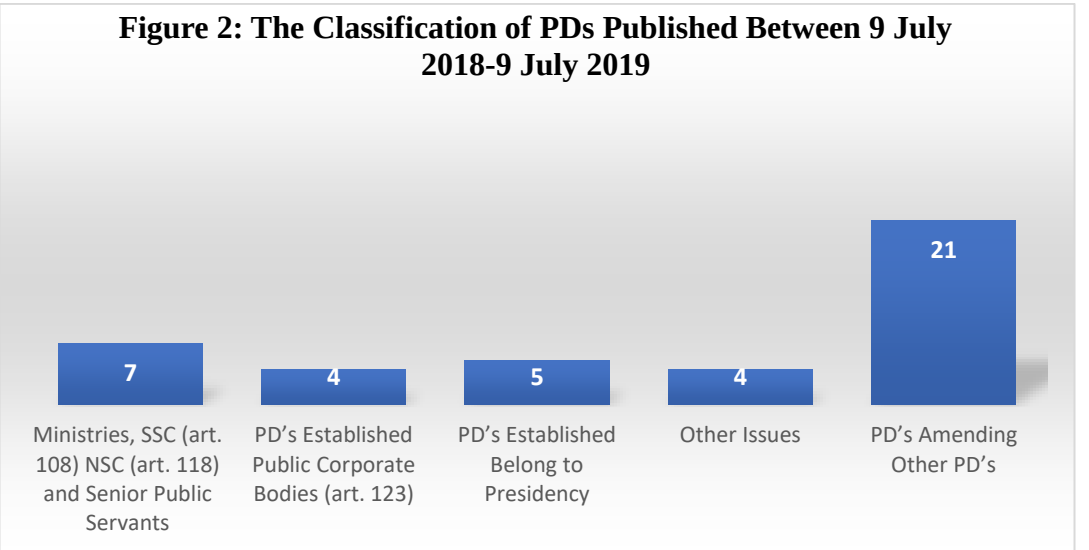
In Turkey, from 1971 to 2017, the Turkish executive branch had a type of delegative decree power *(kanun hükmünde kararname-decree-law).* According to article 91 of pre-2017 version of the Turkish Constitution, the Cabinet was able to wield this type of decree as long as TBMM approved it by an "authorization law" that indicates the scope and time of decrees. These delegated decrees could not regulate basic human rights but economic and social rights. Also, in emergency periods, cabinet could publish decree-law without basing it on an "authorization law" with a condition to submit to TBMM immediately. In total, the cabinet published 706 decree-laws (average 14.1 per year) including emergency decree-laws between 1971 and 2018. Through all of these decrees, the Cabinet made regulations on privatization; public official reforms which resulted in the dismissal of a hundred thousand public servants in post-2016 coup attempt. This means that the executive branch of Turkey became use to administration by decree-laws. Owing to this historical reasons as well as the perception of the powerful executive in recent times, the makers of the 2017 amendments gave to the president a constitutional decree power (Shugart and Carey 1998; Colomer and Negretto 2003, p.38; Payne 2007, p.89). The key feature of this constitutional decree power for Turkish president is that president does not have to be base on any "authorization law". This power is directly obtained from the constitution. According to article 104 of 1982 Constitution, the scope of PD has to be the issues within the executive branch and must exclude *the fundamental rights, individual rights and duties, political rights and duties (Article 104/17).*
A major discussion is about place of PDs on the hierarchy of norms. According to article 104 (17), *"No presidential decree shall be issued on the matters which are stipulated in Constitution to be regulated exclusively by law. No presidential decree shall be issued on the matters explicitly regulated by law. In the case of discrepancy between provisions of the presidential decrees and the laws, the provisions of the law shall prevail. A presidential decree shall become null and void if the Grand National Assembly of Turley enacts a law on the same matter*[3]*".*

[3] See. Article of 104, Turkish Constitution, https://global.tbmm.gov.tr/docs/constitution_en.pdf, 11..12.2019.

These provisions clearly show that the constitution favors supremacy of the laws instead of PDs. However, some other provisions of the constitution make create a form of uncertainty. Even if these provisions are about inner organization of executive branch, it is not easy to detect the front line of these domains. These domains – *establishment, abolition, the duties and powers, the organizational structure of the ministries, and the establishment of their central and provincial organizations, shall be regulated by the presidential decree. (article 106), The functioning of the State Supervisory Council, the term of office of its members, and other personnel matters relating to their status (article 108), organization and duties of the General Secretariat of the National Security Council (Article. 118)* "shall be made by presidential decree. Also, public corporation bodies shall be established by PDs as well as the law (Article. 123). Due to the fact that the structural form of the provision used "shall" instead of "can", some Turkish scholars asserted this issues can be regulate by the President only. This implies that these are reserved domains of executive branch and TBMM cannot issue any law about it (Gözler 2019, p.867; Atar 2019, p.257). Conversely, majority of Turkish scholars suggest that the Constitution does not explicitly prohibit the TBMM from regulating those domains (Ardıçoğlu, 2017, p.44; Anayurt 2019, p.325). In fact, the constitution does not clearly distinguish "the executive domain", the president freely regulate a specific area denoted as the executive domain. Therefore, the constitution gives the president a "carta blanca" on law-making (Çalışkan, 2018, p.27), though, this issue remains on the front burner and awaits resolve on the TCC. The court is still yet to decide on the issue.

Together with the 2018 elections, the president has guaranteed the TBMM majority. This has made it easy for the president to issue any PD if and when needed. Moreover, before it came to force as a new government system in July 2018, TBMM approved an authorization law. Based on this law, the Cabinet issued its no.703 delegated decree on July 9, 2018. The aim of this decree was to abolish laws regulating issues relating to the domains of the PD, thus, the government prepared a legal structure for the PDs. In fact, according to Yıldırım (2019, p. 336), what was made was a domain cleaning. Furthermore, post June 2018, TBMM consciously and as a political choice, have not regulated issues relating to what PDs can regulate.

**Figure 2: The Classification of PDs Published Between 9 July 2018-9 July 2019**




The first year of the system (July, 2018 –July, 2019)[4] showed that constitutional decree power is basic instrument to make law and to produce policy for the president. When law-making performance of president is compared with TBMM's law-making performance, we see that the president is a more effective law-maker than the TBMM. As can be seen from Figure 2, the president has published all type of constitutional decrees in alignment with his constitutional authority. The president regulated the ministries (PD no. 4), National Security Council (PD no. 6) and issued an appointment of high-ranking public servants (PD no. 3), established public corporate bodies and entities belonging to the presidency. In addition to the preceding decrees, the president published different decrees in relation to executive branch (PD no. 8, 9, 10 and 25). What is remarkable is in these entire decrees is that majority of the PDs amended other existing PDs. This amount to the amendment of 21 decrees of the last 28 PDs published. Hence, this implies that 50% of the PDs were amended one, specifically on PDs no. 1, 2, 3 and 4. Some possibilities in terms of this behavior of president include the following;

First and foremost, the president maybe experienced some unforeseen necessities of modern administrative organization. As a result, the new requirements necessitated new decrees. Nonetheless, the period in

[4]Data are collected using Official Gazettes between July 9, 2018 and July 9, 2019. See. https://www.resmigazete.gov.tr/.

question in which this study examined is rather short for unforeseen requirements as much as 21 PDs. Second, it was not carried out with a diligent and prepared process. In fact, this is highly possible since the process of publishing is faster than making laws and fewer actors participate in the process. With regards to the process that a law comes to force, initially, one or more MP proposes a law draft and President of TBMM scrutinize the draft and subsequently the president of TBMM sends the draft to the commission and the details of the law are formed. To buttress the second reason, in plenary session of TBMM, law draft is usually discussed article by article and if it is approved, TBMM forwards it to the president; meanwhile, the public opinion is sorted and considered. In the event that the public opinion is negative, the president can use his/her veto power on the draft. As a result of this, the draft is tested a lot of time.

However, the publishing process of PD has not wide-participation and deliberative as much as law drafts. That's why, mistakes can be determined frequently. Thirdly and an important reason is the political aims. In this case, the president, due to the fact that he is the leader of his political party, feels that he has to rewards his supporters and, political and bureaucratic allies through executive positions. In doing so, he enacts decrees that will ensure the legality of the appointment of his allies to executive positions. Such PDs that regulate the executive positions change frequently. For example, decree-law no. 703 regulated that rectors of state universities are appointed by the president. Then, PD no. 3 regulated the appointment conditions of university rectors. One of conditions for this appointment was that the appointee must been a "professor for 3 years". Two months after this decree, another decree, PD no. 17, changed the condition and stated that all that is needed to be a rector was to have attained a "professorial level." From this, it can be inferred that any reasonable justification is put forth as reason for the needed change. In any event, the earlier views of Fuller (1969, p.39) lent credence to the implication of this situation that PDs makes legal security and rule of law questionable.

To further grasp presidential dominance on law-making, the president's performance of issuing PD should be compared with TBMM's performance of approving laws. The president issued average 3.5 PDs per

month. In same period, 42 bills have been enacted by TBMM[5]. For a moment, it seems that both the president and TBMM equally enacted regulations with force of law. However, if the laws are diligently counted, the presidential dominance prevails. Of the 42 laws, 11 were about ratifying of international agreements that executive branch has direct role on the signing of[6]. Also, the budget and final account bills that the president proposed are place within all of laws approved by TBMM[7]. So, the president has played an effective role on the 13 (30.9%) of the laws approved by TBMM between July 2018 to July 2019.

The presidential veto power is another essential power of president together with decree power. The potency of the veto power is measurable when the parliament is hostile to president. It is obvious that in a situation of any tension between the president and parliament, precedence have revealed that the president would evoke this power. On account of this, the nature of the president's veto power gains significance. In comparative presidentialism studies, it seems that the majority to override the presidential veto is different from one country to another. While, the parliaments of some countries insist it must be by the vote of 2/3 of the members of parliament to override the veto, in some other country, this requirement can be absolute majority or 3/5 of the parliament. Of these three choices, the one that most highlights the power of parliament is the second one. In this parameter, when the government is divided whereby the parliament is dominated by the opposition parties, parliament takes a chance to challenge the president's political ambitions. For this reason, one can suggest that the Turkish parliament have an opportunity to overcome the presidential veto since the TBMM can have the majority and can overturn the presidential veto by absolute majority. However, a consolidated opposition is a necessity for TBMM to be able to operate as

[5] Legislative year is started on 1 October. Therefore, I investigated period between 1 October 2018-1 October-2019. First law that was published in the Official Gazette on 11 October 2018 is the law no. 7147. The last law that is published in the Official Gazette on 19 July 2019 was the law no. 7186.

[6] These are the laws no. 7154, 7158, 7160, 7168, 7169, 7170, 7171, 7172, 7173, 7177 and 7178.

[7] 2019 budget law is denominated as "Budget Law of Central Administration of the year of 2019 No. 7156" See. https://www.resmigazete.gov.tr/eskiler/2018/12/20181231M1-1.htm; Meanwhile, 2017 final account law is denominated as Final Account Law of Central Administration of the year of 2017 No. 7157, See. https://www.resmigazete.gov.tr/eskiler/2018/12/20181231M2-1.htm.

a forceful institutional mechanism in the divided government period. The succeeding paragraph reveals that the concurrent elections and 10% national threshold remains an obstacle to elect an MP from small parties, consequently prevent the building of an effective oppositional majority in TBMM.

**President's Appointment Power**

Turkish president has hegemony on the executive branch. The president controls a huge administrative structure both constitutionally and legally. He can appoint and dismiss almost all the members of the state apparatus freely as well as their ministers. According to article 104 of the constitution, the president shall appoint vice-presidents, ministers and high-ranking executives. The president also according to PD no.3, shall appoint servants of presidential offices and ministries, ambassadors, the members of the High Education Council, university rectors, police chiefs, generals of army, governors and vice-governors of provinces, governors of districts *(kaymakam-qaymaqam),* ministerial directors of provinces, police directors of provinces, even regional governors or muftis of province etc. (Article. 2 and 3 of the PD no. 3). In addition to this, the president shall appoint the members of independent administrative authorities such as High Council of Radio and Television, Competition Authority, public Procurement Authority, Energy Market Regulatory Authority etc.

As a result, the president dominates all sides of the executive branch. Based on this appointment power, president Erdoğan published more than 300 presidential appointment orders *(Cumhurbaşkanlığı atamakararı, hereafter "the order")* between July 9, 2018 and July 9, 2019[8]. However, one can see that there is no unique or monotype implementation about publishing procedure of the orders. Sometimes, the president makes multi-appointments through only an order, specifically, for the appointments of governors of provinces and districts, muftis, ambassadors or rectors[9]. In reality, the appointments which are made by president Erdoğan are bigger than we thought.

[8]The data are collected using Official Gazettes between July 9, 2018 and July 9, 2019. See. https://www.resmigazete.gov.tr/.

[9] For example, in 2018, presidential appointment orders no. 200, 201 (for muftis), 230 and 231 *(for ambassadors)* 260-268 *(for governors of provinces and districts)*, and, in 2019, 2019/84, 2019/132 *(for university rectors)* included the multi-appointments.

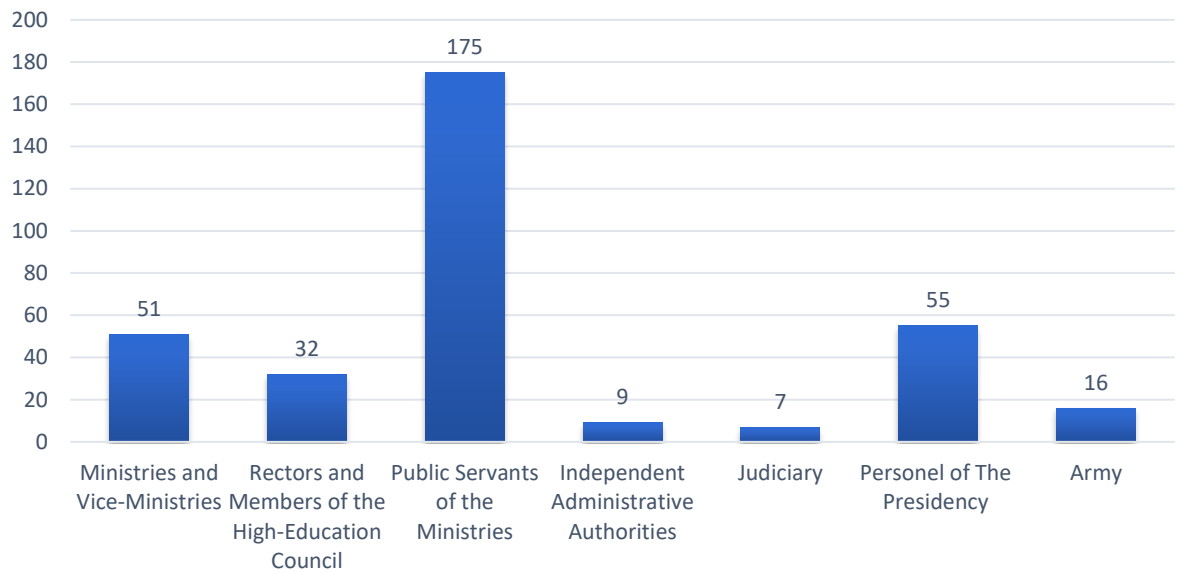
In addition, a president, according to constitution shall directly appoint one-fourth of the Council of State (Article 155), 12 of the 15 members of TCC (Article 146) and 3 of 13 members of CJP (Article 19). However, there is no doubt that he can intervene in the appointment of the 3 members of TCC and CJP which TBMM selects. President Erdoğan found the chance to appoint Justices for Supreme Courts of Turkey, this included five appointment for Court of State *(Danıştay)*[10]and two appointment to Constitutional Court [11] within the first year of the Turkish type of presidentialism. President Erdoğan has also appointed five Justice to the TCC since 2014 [12]. If accounts of these appointments are carefully considered, the TCC is comprised by 15 Judges. Hence, one can observe the effectiveness of Erdoğan dominance within the Court.

[10] Appointments for Court of State are published at Official Gazette by Presidential Appointment Orders no. 14, 15, 16 17 and 244. See. Official Gazette, https://www.resmigazete.gov.tr/eskiler/2018/07/20180717-4.pdf, https://www.resmigazete.gov.tr/eskiler/2018/07/20180717-5.pdf, https://www.resmigazete.gov.tr/eskiler/2018/07/20180717-6.pdf, https://www.resmigazete.gov.tr/eskiler/2018/07/20180717-7.pdf, https://www.resmigazete.gov.tr/eskiler/2018/11/20181129-1.pdf, 19.12.2019.

[11] Appointments for Constitutional Court is published at Official Gazette by the Presidential Appointment Orders no. 2019/37 and 2019/158. See. https://www.resmigazete.gov.tr/eskiler/2019/01/20190125-8.pdf., https://www.resmigazete.gov.tr/eskiler/2019/07/20190706-2.pdf, 19.12.2019.

[12] They are Kadir Özkaya, Recai Akyel, Yusuf Şevki Hakyemez, Yıldız Seferinlioğlu and Selahaddin Menteş.

**Figure 3: The Quantity of Presidential Appointment Orders between June 9, 2018-June 9, 2019**




Erdoğan's power on the TCC can be perceived better in the Post-2016 Coup when the government declared a state of emergency. By the emergency decree-laws, more than 100,000 public servants were retrenched while media outlets and newspapers agencies were closed etc. CHP made applications to TCC to lift some of the measures of the emergency decree-laws, however, TCC *alleged* that the emergency decree-laws regulated the issues in the country out of the emergency. However, TCC, contrary to its jurisprudence which was established in 1990's[13], rejected these applications with reason that the Court does not have the authority to abolish the emergency decree-laws (See. E. 2016/167, K.2016/160, 12 October 2016, Official Gazette, November 4, 2016 -29898). This interpretation means that TCC chose a literal interpretation of Article 148 of the Constitution that emergency decree - laws are out of review of TCC (Haimerl, 2017). Therefore, the president obtained the power to regulate what he/she wanted using emergency decree-laws (Acar, 2019; Castilla-Ortiz 2019, pp.58-59)." This situation can be explained not only through the understanding of the self-restraining

[13]In 1991, Constitutional Court ruled that calling any measures a decree adopted under a state of emergency would not avoid constitutional review if the scope of the decree went beyond what was necessary under a particular state of emergency. In other words, the Court had held that the government may not regulate matters that are irrelevant to the exigencies of the state of emergency via emergency decrees.

originated from the post-coup period but also through an increasing ideological proximity between the president and the majority of all the judges of the TCC due to the fact that their appointment were from the presidential appointments.

**IV. A Key Ticket to Salvation from the Authoritarian Regime: Presidential Term Limit**

Going by the 2017 referendum, AKP government changed a lot of article in the constitution, particularly, those related to government system. Afterward, the presidential and TBMM elections held in 2018 and Erdoğan was elected for a second term as president. What is fascinating is that a norm was not amended along with the huge amount of amendments made. This norm is article 101 of the constitution that regulates the presidential term limit. This norm explains that the president has a limitation of only two terms since 2007. However, they did not foresee any transition article about Erdoğan's first presidency (2014 - 2018). At this point, some questions that is raised when we take on the account of the fact that Erdoğan was elected as president by an elections of 2014 and 2018 includes; Can Erdoğan be a candidate in 2023 presidential elections again? Should Erdoğan's first presidency which served together with a prime minister within a double-headed executive count for the new system?

AKP supporters have suggested any claim about these issues are purveyed by opposition and prefer to keep silence. However, it is clear that they support the idea Erdoğan's first term (2014-2018) should not be include to the post-2017 period since the new system is significantly different when compared to the pre-2017 double-headed executive. Their views on the issue can be understood clearly when one visits the Web page of the Turkish Presidency for a short time. The Web page introduces Erdoğan as the first president of the Turkish type of presidentialism. Hence, so there is a tacit understanding to exclude the Erdoğan's first presidency from the new system (Tecimer, 2019). They can argue that Erdoğan's first term was within a semi-presidentialism. Erdoğan had limited powers within this period unlike in the Turkish type of presidentialism. This constitutional understanding of the presidency evolved from the 2017 amendment (Tecimer, 2019). Therefore, the new understanding resets the clock in the case of Erdoğan. However, there is no reason to justify this

argument. In order to reset the old president's term limits, there is need for a reasonable and clear constitutional provision or constitution-maker should make a new constitution (Ginsburg et. al., 2011, p.1848; Tull and Simons 2017, p.84). Moreover, in the case of Turkey, what is made in 2017 was only constitutional amendment but was not a constitution making. As a rule, constitutional amendments cannot affect the situations which are formed with constitutional practices made in the pre-amendment period. The only exception to this rule may be to regulate the situations of old president's term limits by a transition article.

Unfortunately, any transition article about Erdoğan's first term which took place between 2014 -2018 was included. Therefore there is no reason to deviate from general interpretation of the law (Gözler, 2019, p.795). According to the 1982 constitution, Erdoğan was elected first time in 2014 and the second time in 2018. Thus, it can be defended that, except the foreseen conditions in article 116 (3), Erdoğan cannot be candidate for next presidential election. Then, what does the article 116 (3) say? Article 116 (3) states that *"If the Assembly decides to renew the elections during the second term of the President of the Republic, he/she may once again be a candidate."* This means that if a president serves his second term and wishes to be elected for the third time, he must negotiate with the TBMM and ensure a TBMM decision for snap elections. If the president is victorious in the decision of the TBMM, he/she would be guaranteed to be a candidate for next presidential elections "to compensate his/her for an uncompleted second term" again. The constitution does not place a restriction on TBMM's decision on the snap election, as long as TBMM decides the snap election by 3/5 votes of total members (Article 116/1), this decision cannot be prevented. President must take into account only political distribution of parties in TBMM to get 3/5 majority. However, if a president, like Erdoğan, has served as head of government for 17 years, what he will want when he participates in elections is to win. Through media channels, newspapers, state bureaucracy, electoral council and other unofficial state sources, the elections -*at least presidential elections*- can be won easily. Therefore, even if the president does not have the 3/5 majority of TBMM for the snap election decision, he/she can sacrifice any source of state to convince the people that he did. For the 2023 elections, Erdoğan needs to have 60 MP at least and this MP's can be ensured by İP or HDP. To move from the current status quo, that is, the Turkish regime with hyper-presidentialism and return to democracy, the only thing that

can be done is to protect the term-limit rule which is regulated by articles 101 and 116 so that corrupt politicians do not interpret these rules to satisfy their desires.

**Conclusion**

Turkish type of presidentialism has obviously been converted to a hyper-presidentialism since it came to force in 2018. To make this inference, this study observed the first year of the system and made the arrived at the following conclusions.

(1) The president dominated TBMM using his coalition. The dominance was provided by the concurrent elections and an electoral law which permits electoral alliances on TBMM elections. This suggestion is verified spontaneously when we compared the 2018 TBMM elections which was held together with the presidential elections and the June 7, 2015 TBMM elections which held only parliamentary election. By virtue of the concurrent elections, president Erdoğan got a majority support of the TBMM. In addition to this, he is officially the party leader of AKP which is the biggest party within TBMM. Therefore it is clearly impossible to enact a bill that will be at loggerhead with the opinion of the president.

(2) Erdoğan is in a position that will ensure a co-partnership along with TBMM on making policy and regulations which possesses force of law by his decree power and budget power. According to empirical data, Erdoğan published more regulations which have force of law than TBMM did. Moreover, it can be said that even if TBMM is against Erdoğan, it rarely can reject the budget law because of provisions of the constitution. Therefore, the president directs the law-policy of the state.

(3) Erdoğan governs the administrative organization of the state. However, his authority is not limited to central government which includes ministers, vice-presidents or public servants of presidential offices. He governs provincial public servants (like muftis, qaymaqams, governors of provinces), universities (through of rectors and High Education Council) and independent administrative authorities by virtue of his appointment power. In addition, the president possesses a dominant position on the Judiciary by virtue of his appointment power to TCC, HSK

and Danıştay within last a few years. As a conclusion, it can be said that Erdoğan have dominance on all state branches in his presidential reign.

(4) In order to make Turkey a democracy again, Erdoğan must respect the constitutional term limits. Thus, the ruling will pass the presidency to the opposition candidate or another person within AKP. Thanks to this transition, check and balance can be functioned even if it is limited.

**Notes on Contributor**

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