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FUNCTIONALITY OF THE METHODS USED BY THE LEGISLATURE IN TURKEY IN SUPERVISING THE EXECUTIVE BODY

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Abstract
The task of monitoring the executive processes has been given to the legislative body on the basis of the principle of the rules of the parliamentary democracy and separation of powers. This supervision in Turkey is carried out within the framework of the authority granted by the statutes of both the Constitution and Turkish Grand National Assembly. The means of supervision of executive processes by the legislative body have been listed in the 98th Article of the Constitution as Questioning, Interpellation, General Meeting, Parliamentary Inquiry and Parliamentary Investigation and the ways through which this supervision is carried out have been presented in the articles 96-114 of the Assembly Statute. The effective and efficient use of supervision channels is of great importance for the existence and permanence of the democratic system. The transparency and accountability of the executive body to the assembly, which represents the will power of the public, is also the indication of the maturity of democracy. In this context, in the multi-party political system which is now valid in the parliamentary democratic system of Turkey, the practical functionality of the means of supervision is important, as well as the legal infrastructure that enables the opposition parties which are represented in the legislative body to supervise the executive power within the existence of disciplined parties. The content of this study is made up of the supervision channels through which the legislative body monitors the executive body in terms of statutes and procedures as well as what could be done to make these channels more functional to facilitate a more powerful parliamentary democracy on the basis of separation of powers.

Key Words: Parliamentary System, Separation of Powers, Supervision Mechanisms.

INTRODUCTION

In accordance with the theoretical analyses and observations in the process, it seems improbable to establish a direct cause and result relationship between the adopted governmental system and the democratic regime. Moreover, healthy functioning of the adopted government model and thus serving to the institutionalization of the democratic regime in this respect is possible if interrelationship of powers are subject to deep-rooted traditions or positive arrangements that are not questionable (Sezginer, 2010). Besides the positive legal arrangements, each and every member of the parliament who has been assigned to carry out the constitutional duties related with the relationships between powers in practice, especially those between the legislative and executive bodies, has to conceive the interrelationships between powers that are defined by the Constitution and also be respectful to other powers. (Corrado, 2004). In this context, one of the most important functions of the legislative body in the parliamentary system which has been molded within the framework of the representative democracy in Turkey is to supervise the ruling political power in the name of public and, as a consequence of this supervision, put an end to all practices against the laws, political structure, universal democratic principles and the constitutional order and in a way to “punish” those who have been involved in them. (Tekin and Ciftci, 2007). The legislative body implements this supervision in the name of the public and thus interfere in the practices of the executive body (Deniz, 2006). In this context,

according to the Turkish Constitution, political means of supervision used by the legislative body can be listed as Questioning, Interpellation, General Meeting, Parliamentary Inquiry and Parliamentary Investigation. As long as the legislative body utilizes these channels of supervision and gathering information within the authority and limits provided by the Constitution, certain tasks which will be useful both for the state and the individual can be carried out. For this reason, all parliamentary systems do have channels of information gathering and means of supervision (Aras, 2011).

1. QUESTIONING

In accordance with the constitution currently in effect, as one of the means of information gathering and supervision, questioning consists of requesting information, either in verbal or written form, from the prime minister or ministers in the name of the Cabinet as specified in the 98th Article of the Constitution. Questioning has to be concise and unjustified, and without asserting personal opinions, should not comprise private and personal issues. In this context, issues about which information can easily be obtained from another source, issues the only aim of which is to provide consultation and issues the subject matter of which are the same as that of a interpellation previously given to the Grand National Assembly are accepted by the Speaker of the Assembly. An important point to be clarified here is that verbal or written form is to do with the way of response rather than the way question is directed. The form used in the questioning phase is written in both stages. The question can only be directed with the proposal for a motion. Moreover, the question in such cases can be answered in written form even if it has aimed for a verbal one. When the government fails to answer the verbal question in three sessions except for exigencies, the question automatically takes the form of written question (Bakırcı, 2000). On the other hand, the response time for verbal and written questions also tends to vary. While the verbal questions are put on the agenda five days after the motion is forwarded to the related ministry, written questions have to be answered in the next fifteen days after they are sent to the prime ministry or relevant ministry (if not answered, an additional ten days are given following the written notice). If still not answered in the additional time, written questions are published on the list of incoming documents. This, in a way, is the declaration and documentation of the fact that the executive body is escaping from providing the legislative body with the necessary information and also being supervised. However, the failure to answer any question in allocated time periods does not always mean the same thing. In some cases, in order to obtain necessary information, the government may delay answering any written question by informing the Speaker of the Parliament in accordance with the 99th Article of the Parliament Statute so far as it does not exceed thirty days, as gathering necessary information may sometimes take quite a long time (Bakırcı, 2000). The use of verbal or written questions by the members of the legislature embodies certain purposes (Bülbül, 2011).

Questions can be directed for the following purposes;

- For the implementation of the legislation in a healthy manner (There is a technical purpose for apolitical activity);
- To pave the way for other supervision channels (It may function as a source in

ParliamentaryInvestigations and Interpellation procedures);

- To put pressure on certain authorities so as to prevent the realization or implementation of anyactivity or to give a message to certain circles;
- To be able to reveal government‟s executions in front of the parliament and public by the members ofthe ruling party or parties.

In accordance with these objectives listed above, it is clearly seen that the supervision of the executive body through questions, which functions with the confidence vote of the legislature according to the principles of the parliamentary democracy, does not properly serve to the point in Turkey. When the organized parties in Turkey are taken into consideration, it can be seen that the political party or parties holding the majority in the parliament do not resort to no-confidence motion as a way of supervising the ruling majority. On the other hand, it can be seen that opposition parties refer to verbal or written motions in order to use the given replies in the national or local media for personal or political purposes. Moreover, since there is no clause in the Constitution or the Assembly Statute defining the content and form of the replies given to written questions, the supervision of the executive body through questions proves useless.

What is more, to what extent supervision through questions serve to the point in even countries with a significant history of parliamentary system is rather questionable. For example, 48/2 article of the French Constitution includes verbal questions as one of the means of supervision. Yet, in practice, the possibility of being unanswered by the members of the parliament undermines the efficiency of supervision channels. Furthermore, despite being a more effective mechanism in contrast to verbal questions, replies given to written questions are not periodically published in the Official Gazette even though these written questions are the yields of a tradition that have existed for thousands of years (Prakke and Kortman, 2004).
Verbal question in particular is a limited supervision method because it cannot be discussed in the absence of the deputy or minister who has directed this question and other members of the parliament cannot join this meeting (Özbudun, 2008). Furthermore, since this question process does not breed any political and criminal responsibility to the owner of the question and since it has a limited public power, its effectiveness is of very little significance. However, the influence of verbal and written questions, the content of which can be either of national or local nature, can be quite noteworthy on the government and members of the parliament when they are utilized in the media and social networking sites.

2. INTERPELLATION

The mechanism of interpellationion was first used in France and adopted by Turkey on the constitutional level with the Fundamental Law of 1876. As one of the supervision methods, interpellation appears to be the most effective tool for monitoring the government and its movements (Iba, 1997). 99th article of the Constitution and 106th article of the Assembly Statute includes regulations on the procedures of interpellation. Interpellation, with a no-confidence vote taken after a screening session as a result of the unlawful deeds of the government or any minister, is a supervision mechanism which may lead to the fall of a

government, banishment or cessation of a deputy‟s membership. In accordance with the regulations, the fall of a minister or the whole cabinet is possible only with the decision taken by the absolute majority in the parliament. In voting by open ballot, only no-confidence votes are counted so as not to injure the prestige of the government and this practice was adopted for the first time with the 1982 Constitution (Odyakmaz et al, 2008). In addition to this, another point that has to be stated in the interpellation procedure is that the interpellation process should be scheduled in detail rather than jumping to conclusions by bringing forward these motions to the General Meeting and come up with hasty resolutions as soon as they are tabled. In this context, two or one-day waiting period specified by the Constitution for the various stages of interpellation talks is called "cooling-off period" in the literature of politics. The objective here is to allow deputies to think as much thoroughly as possible and decide without being under the influence of emotional factors (Özbudun, 2008).

On the other hand, as the interpellation process is tied to an absolute time-bound, the agenda of the General Meeting may result in a deadlock and the opposition wing may resort to such supervision means in order to impede the legislative process as a counter movement against the current agenda which has been set by the ruling party. In this context, interpellattion is one of the tactical movements of obstruction used by the opposition wing (Iba, 2003). The significance and functionality of interpellation among political supervision methods in the parliamentary law stems from its ability to make any member of the cabinet or member of parliament accountable[1] and eventually depose that member for his unlawful deeds (Yıldız, 2012).

In this context, interpellation, with its political influence, does not only aim to overthrow the government or end the membership of a deputy, but also it is the most profitable political mechanism for the opposition wing since it brings about striking political outcomes and thus attracts a great deal of public attention as a supervision method. While the opposition benefits politically from interpellation process, the government obtains power and stability among other parties in the parliament with the established relationship of belonging to a group. In parliamentary systems where it is generally difficult to attain stable majorities, interpellation may appear to be a tool for initiating a process leading to new elections or new governments rather than beinga supervision tool that allows the opposition to be heard much better and the ruling party to act more carefully (Bakırcı, 2000).

3. GENERAL MEETING

One of the means of supervision and information gathering as stated in the 98th article of the Constitution and 101-103rd articles of the Statute of the Grand National Assembly is general meeting. General meeting is a process in which a certain issue related with public issues or government‟s activities are discussed in the Plenary Committee of the Grand National Assembly following the submission of a motion by the government, political party groups or at least twenty deputies. Practically, once it has been decided that the motion will be taken to the agenda in the general meeting, deputies other than those who submitted the motion can also attend the meeting. In this respect, the general meeting method is a more effective supervision method when compared to the verbal session which is carried out as a bilateral dialogue between the deputy who has submitted the motion and the relevant minister (Orak, 2003). On the other hand, since it can be convened with the decision of the Parliamentary

Commission, general meeting is the medium where mostly government motions are negotiated. Other motions which are not supported by the government are less likely to be discussed here (Tanör and YüzbaĢıoğlu, 2001). What makes general meeting so significant is that it facilitates the government to inform the opposition about the current events in international relations as well as in general politics and also allows the government and opposition to exchange views in open or closed sessions. When compared to other means of supervision, general meeting differs from questioning in that sides are not involved in this process. As mentioned in the questioning method, questioning is more like a dialogue between the questioning deputy and the prime minister or relevant ministers. In general meeting, not only those who ask and are subject to answer but all the members of the parliament join the session (Bakırcı, 2000). In this respect, general meeting has a multilateral discussion nature (Soysal, 1986).

Unlike in the interpellation process, general meeting does not require political accountability and so lead to a risk of government fall or create worries in the governmental body. In countries with a single- party majority, the government usually does not seem to be in favor of operating the interpellation process; however, they may appear to be more tolerant against a general meeting which does not involve any political sanction. General meeting, at the same time, may decrease cabinet instability to a certain extent in countries with unstable multi-party regime by allowing a medium of criticism without bringing down the government (Özbudun, 1962; Atlay, 2010).

Therefore, general meeting is an important supervision method with its degree of effectivenessremaining between questioning and interpellation methods and it embodies the useful aspects of both methods, also eliminating unfavorable aspects to a certain extent (Özbudun, 1962). As a result, general meeting has various positive functions in that it allows all the deputies to join sessions without creating any political responsibility and eliminates bilateral talks that can be seen in the questioning method (Özer, 2000).

4. PARLIAMENTARY INQUIRY

98th Article of the Constitution states that parliamentary inquiry is a kind of inspection to obtain information on a certain issue. Moreover, 104th and 105th articles of the Assembly Statute also define the procedures of parliamentary inquiry. When the authorities of the legislature are taken into consideration, parliamentary inquiry can be studied under three headings: “Legislative inquiry”, “political inquiry” and “judicial inquiry (investigation).” Legislative inquiry is the kind of inquiry carried out by a commission made up of the chosen members of the legislature in order to obtain necessary information prior to making a legal arrangement. Political inquiry is the inquiry directly implemented by the legislative body itself in order to collect information about the policies and procedures of the executive body. Judicial inquiry is one that aims at obtaining information about whether the legislative body properly utilizes its authorities in line with the laws. Legislature carries out this judicial inquiry to gather information about the issues which are within the scope of its own authorities while exercising these judicial authorities (Onar, 1977; Gökçe, 2009 ; Aras, 2011).

In accordance with the procedures, when opening a parliamentary inquiry, the same

procedures as in opening a general meeting are applied and a special commission is elected to handle the case. The number of members of this commission, its work hours and the possibility of working out of Ankara if necessary are all determined by the Plenary Committee with the proposal of the Parliament Speaker. An additional one month is given to the commission in case it fails to complete its inquiry in the assigned three months. At the end of this time period, if the commission still has not completed its inquiry, a meeting is held by the Plenary Committee to study the reasons for the failure to complete the inquiry as well as the results attained until then. While the Plenary Committee may suffice with this meeting, it may also decide to establish a new commission. Parliamentary Commission of Inquiry is authorized to carry out inspections and also demand information from the ministries, general and annexed-budget administrations, local administrations, district and village administrators, universities, Turkish Radio and Television Corporation, state-owned enterprises, banks and institutions that have been founded with special laws or the authority granted with a special law, professional organizations that have the status of public institution and associations working for the public interest and invite officials from these organizations and request information from them.

As in the case of General Meeting, whether a parliamentary inquiry will be launched will be decided by the General Assembly of the Parliament following a screening meeting. For this reason, it is rather difficult to expect the opposition wing that is numerically in minority in the parliament to be successful in its attempts to supervise the government through parliamentary inquiries when political realities are taken into consideration. However, the opposition may hope to benefit from the effects of screening meetings to be held prior to parliamentary inquiry. In fact, almost all the parliamentary inquiry motions are submitted by opposition parties and a large portion of these motions are rejected by the majority that constitutes the government (Tülen, 1999).

On the other hand, since state secrets and trade secrets are kept within the scope of exception in parliamentary inquiries in accordance with the 105th article of the Assembly Statute, this may lead to a great deal of abuse of authority in practice. As seen in recent examples (such as Susurluk Parliamentary Inquiry Commission), when requested information from them, some of the officials do not come to the commission or they simply abstained from giving detailed information with the pretext of their being statesecrets.

As a result, in the parliamentary system, since most of the laws are drafted by the government and submitted to the parliament in the form of bills, it is naturally the government‟s responsibility in essence to gather all the necessary information and therefore it is generally impossible to expect from the legislature to appeal for a parliamentary inquiry. Besides, since there is identicalness between the government and the majority in the legislative body, it is usually the opposition wing rather than the ruling side that mostly benefits from parliamentary inquiry as a means of supervision (Onar, 1977).

5. PARLIAMENTARY INVESTIGATION

Parliamentary Investigation has been elaborately defined in the 100th Article of the Constitution and 107-114th Articles of the Assembly Statute as one of the means of supervision. In parliamentary investigation, at least one-tenth of the total number of members of parliament have to submit a bill regarding the penalty-deserving practices of the

prime minister or any of the ministers. Within thirty days after the submission of the motion for parliamentary investigation regarding the charge, the motion is discussed with a special agenda in the Plenary Meeting with the proposal of the Consultative Committee. Whether a parliamentary investigation will be opened is decided by the Plenary Committee through secret voting. The investigation is conducted by 15 deputies that are chosen by drawing names in the Plenary Committee of the Grand National Assembly.

Committee of enquiry completes its studies in two months (an additional two months can be given when requested). Within fifteen days after the report of the committee of enquiry is submitted to the assembly speakership, it is printed and forwarded to the prime minister or minister about whom parliamentary investigation is demanded and it is also delivered to the members of the parliament. The report is dealt with in ten days after it is delivered to the members. Impeachment is possible through secret voting with the absolute majority in the Plenary Committee of the Turkish Grand National Assembly. If a decision of impeachment is taken, the file is added to the list of files and then forwarded within seven days to the Presidency of the Constitutional Court where the case will be seen. Indeed, parliamentary investigation is an initial investigation, and whether an eventual investigation will be launched later (Tülen, 1999).

Parliamentary investigation in Turkey which results in political and criminal outcomes in accordance with the parliamentary law is similar to the practice of impeachment in the United States. As a matter of fact, similar to the practices in Turkey, impeachment is conducted by the Congress only for the President, Vice-president and cabinet members. Court case is conducted by the Senate and criminal sentence istaken by two-thirds of the senate members (Emanuel, 1976). In Turkey, impeachment against the prime minister or ministers is possible with the absolute majority in the parliament (276 members) according to the 100th article of the Constitution and in accordance with the 113th article of the Constitution, any minister who has been sued falls from his seat. In the case of the impeachment of Prime Minister, the government is considered to have resigned.

In this context, parliamentary investigation, according to the Turkish parliamentary law, is a means of parliamentary supervision regarding the charges directed by only deputies at the prime minister or ministers for their deeds and/or providing political and criminal liabilities for the prime minister. In legal terms, parliamentary investigation is a special trial process against the prime minister and ministers for their official deeds. Accordingly, within the context of parliamentary investigation, drawing similarities between the acts and operations carried out by the parliament and general trial processes often results in misleading conclusions (Iba and Bozkurt, 2004). In fact, parliamentary investigation is a criminal investigation and thus the execution of this investigation by administrative authorities will not be appropriate, as those who are being tried are the prime minister or ministers who are at the top of the administrative hierarchical order (Feyzioğlu, 2006). Therefore, the sources of the criminal law in parliamentary investigation are also regarded as the sources of parliamentary investigation. Among these sources are the Constitution, Criminal Procedure Law and Criminal Court and other related laws. According to the 90/5 article of the Constitution, since they are put into effect as required, relevant arrangements of international agreements which are based on decree laws are also classified in this category (Feyzioğlu, 2006).

Eventually, the minister in question may in the first place face a punitive sanction as a result of parliamentary investigation. Moreover, the fall of a minister from his office as a result of impeachment can be assessed as an indirect and political sanction against him (Tülen, 1999).

CONCLUSION

In the framework of representative democracy, proper functioning of the relations between legislative and executive bodies in Turkey, where parliamentary system is in effect, is possible only by abiding by the principle of separation of powers. In this context, the viewpoints of both the ruling party and the opposition wing concerning the ways of supervising the legislature appear to be in line with the current democratic culture. On the other hand, it is necessary that the executive body should properly conduct the stated supervision mechanisms on the legislative body as defined in the Constitution and Assembly Statute.

Although asked in accordance with the procedures defined in the Constitution and Assembly Statute,it is significant that the government generally fails to respond to verbal or written questions in the scheduled time, or even if it comes up with an answer, this is usually done without informing the member of the legislation. Certain binding clauses should be included in the Assembly Statute to urge the prime minister as the head of government and ministers to comply with the legal procedures. General meeting and parliamentary inquiry, which are two of the means of supervision mechanism, the composition of the legislative body is of utmost importance. In cases where the government easily holds the majority in the parliament, the practice of these two mechanisms are entirely at the initiative of the government. However, for the legislative procedures to run properly, party groups should assess these general meeting and parliamentary inquiry tools from the point of view of the reasons of motions rather than party benefits or party discipline.

In this context, it can easily be stated that questioning, general meeting and parliamentary inquiry mechanisms have rather slight effects on the governments, as they do not lead to the fall of any government (Gözler, 2009).

The parallelism in execution-legislation relations is also true for interpellation. In the framework of democratic political culture, it is of great importance that the opposition wing not use interpellation mechanism against the government as a tool of obstruction. On the other hand, the ruling party should choose to make its member become aware of his political responsibilities and encourage him to act accordingly, rather than backing his cabinet member Parliamentary investigation which is the only supervision mechanism that results in punitive outcomes is one that directly affects political liabilities in the process as well as individual responsibilities. It will be better if the ruling and opposition parties do not act with a politically revengefulattitude in the parliamentary investigation process.

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