

THE ADMINISTRATION OF THE TURKISH NATIONAL STRUGGLE AND THE FACT OF REGIME WITH TWO CONSTITUTIONS

Emin MEMİŞ

Marmara University, Law Faculty, Department of Public Law, Associate Professor

THE ADMINISTRATION OF THE TURKISH NATIONAL STRUGGLE AND THE FACT OF REGIME WITH TWO CONSTITUTIONS

Abstract: *The Administration of the Turkish National Struggle are two phases: Congresses phase and Constitution phase (First Grand National Assembly: GNA). Congresses phase forms the constitutional thesis. GNA phase and The Constitution of 1921 (1921 Teşkilât-ı Esasiye Kanunu): The Fact of Anatolia Turkish National Struggle Administration created the first GNA in 23 April 1920 and so transformed the “de facto” power of national struggle to the “de iure” power or completed its formation in legal way. The development of the Constitution of 1921 is legalization of National Struggle Administration (“de iure” phase). The GNA regime are two constitutions. And this Assembly had a feature which was never seen before in constitution. That’s because Kanuni Esasi was also in force.*

Keywords: *The Turkish National Struggle, Congress Phase, First Grand National Assembly, The Constitution of 1921 and The Constitution of 1876, The GNA Regime, The Fact of Regime with two Constitutions, The Turkish National Struggle Administration.*

TÜRK MİLLİ MÜCADELE YÖNETİMİ VE İKİ ANAYASALI REJİM OLGUSU

Özet: *Türk Milli Mücadele Yönetimi (Türk Kurtuluş Savaşı) iki safhadan oluşur: Kongreler ve ANAYASA Safhası (Birinci Büyük Millet Meclisi: GNA). Kongreler safhası (özellikle Amasya Genelgesi, Erzurum ve Sivas Kongreleriyle) “de facto” (fili) iktidarı yaratır ve bu olguyu 23 Nisan 1920’de kurulan Birinci Büyük Millet Meclisi, “de iure” haline dönüştürür. 1921 Teşkilat-ı Esasiye Kanunu gelişimi (ki, bu anayasanın tezleri Kongre safhasında üretilir) milli mücadele yönetiminin yasallaşmasını simgeler (Bir başka anlatımla millî mücadele yönetiminin “fili” safhasının “hukukileşmesi”). Milli Mücadele Yönetimi (yani Birinci Büyük Millet Meclisi Hükümeti sistemi) iki anayasalı bir rejim (ki, anayasacılık tarihinde hiçbir yerde görülmez) olgusunu uygular. Çünkü Kanuni Esasi henüz yürürlükten kaldırılmış değildir.*

Anahtar Sözcükler: *Türk Milli Mücadele Yönetimi, Kongre Safhası, I. BMM, 1921 Teşkilat-ı Esasiye Kanunu ve 1876 Kanuni Esasisi, Birinci BMM Hükümet Rejimi, İki Anayasalı Rejim Olgusu, “Fili İktidar”, “Hukuki” İktidar, Anayasa Tezleri*

I. TURKISH NATIONAL STRUGGLE IN ANATOLIA THE FACT OF THE ANATOLIA CONGRESSES POWER AND CONSTITUTIONAL THESIS

I.1. “National Forces” and “ Defence of Rights” Dynamics [1-10].

Many harmful and useful organizational efforts were observed that resulted the Anatolia military occupation of armistice conditions which were born with the defeat of the World War I. Especially useful reactions are observed in two ways: **A-** Local- regional institutions, **B-** To be gathered of all useful reactions in one organization in the way of being a new authority.

The name of this last institution is “The Society for the Defence of the Right of Anatolia and Rumelia”. This organization was founded in the way of a nation’s reorganize with the interference of Atatürk in the Province of Sivas. Including “dynamics of interior public opinion”, “defence of rights” (**müdafa-i hukuk**),

“national forces” (**kuvayi milliye**) and national congresses are very important dynamics of national struggle organizations [1].

“The defence of rights” was the product of negative conditions realizing Mudros Armistice which was the result of the World War I. It was the name of a new approach representing national will. It was a kind of organization which was organized all around the country, directly convenient to law, despite İstanbul’s last developments, forming the unity -oneness- of nation, trying to demonstrate the unity of country, national oneness in country and abroad, and the name of this institution was called “The Organization for the Defence of Rights”. The Defence of Rights symbolizes the rights of founding a state of Turks who were wanted to be punished by compelling to live under the pressure of injustice and cruelty with the unfair treatment of Mudros Armistice, and demonstrates(at last with “de facto” struggle) the right of living in freedom as a Turkish State against to the Ottoman Government, to the other elements of Empire, and to the winner states of the World War I.

During Anatolia National War of Independence “nationalism”, was not a race problem but a country (defence of fatherland) problem. When exterior dynamic tends to export of imperialism, interior dynamic starts shaping the nationalism reaction.

“National forces” can be evaluated in two meanings:

First, “national forces” (means ‘militia’); secondly symbolizes an organization style. The formula of this approach found its equivalent not only politically but also legally in Erzurum: “**Kuvayı milliyeyi amel, milli kuvvetleri hâkim kılmak esastır**”. In the direction of various developments, this result which created dilemma for Kanun-i Esasi (The Constitution of the Ottoman Empire) transforms into the Turkish Grand National Assembly Government. In regulations published by Sivas National Congress (with the condition of ‘secret’) so it was said: “National Forces which is in charge with the protection of freedom was protected from every kind of attack” (Article 1) and it was pointed that “national will” was dominant to the destiny of state and nation. It was determined that army was bound to this “will”. This situation was reflected in I. Grand National Assembly (GNA). “National Forces” were born with the application necessity of “a national and political program”. Its roots are sourced from Balkans. For example with the reason of Balkan War II, “National Forces” organization which was founded after the military occupation of West Thrace, must be remembered [6,11-13].

For all some negativeness of National Forces, it reflected as “organization thought” in the minutes of Erzurum Congress [14-17]. When taking Basic to the national will which the National Forces produced, the name of this situation was the approach of “de facto” modification of Kanuni Esasi. National Forces dynamic had an important function in maintaining the authority. Against the historical “WAR announcement” rights of states, for the first time in the world (in modern meaning) it created the concept of “country defence” and made it a constitutional fundamental (1921 Teşkilat-ı Esasiye Kanunu- The Constitution of 1921, Article 7) [1,18-20].

I.2. The Administration of the Turkish

National Struggle and Preparation Period

Organizational formation event in Anatolia realized in two phases: A- Congress Phase, B- First Grand National Assembly (CONSTITUTION) Phase.

Congress phases forms the constitutional thesis. Emerging of Assembly Institution and a making constitution (The 1921 Constitution) realized in the legalization of the Turkish State.

(1) The Approach of Amasya Proclamation

Anatolia National Independence Action was anti-thesis of the “herd” and “herdsman” thesis. For first time, thesis of nation is not being “herd” was put forward as an anti- thesis in Amasya Proclamation. This concrete step (Amasya Proclamation) of the period of being a nation, calling the real source of power, contains the turning towards to the nation in politic concept. Declared thoughts in Amasya Proclamation included the GOAL, REASON and METHOD of the Turkish National Struggle.

Amasya Decisions determined public thesis in the context of Public Law. It has the feature of starting document of national events and determines “country” problems in the meaning of today. It takes nation as axis. In short, **A- Participation- combination of all focuses of resistance, B-National Defence, C-The tendency of founding a new national government were determined.**

“Nation’s determination and decision” is a very important touchstone. Amasya took the one’s native land (country) concept with its new content. It placed in nation base in such a way that Ottoman Society was not accustomed. With “a national committee” institution approach, it is understood that the principle of national will would be made base. The thesis of national will, perceives the principle of independence of the nation. In order for this to realize “country defence” became inevitable. Country defence principle contains also the national army institution.

The Amasya Decisions are “revolution invitation”. The key of the revolution was in the hands of nation: It is **the determination and its decision of the nation** which shall preserve the Nation’s Independence. This proposition includes the concepts of national society, national state, national sovereignty and “one’s native land”. It is almost impossible that the Empire would agree with these concepts. These concepts were against the Kanun-i Esasi (The Ottoman Constitution of 1876). Any legal order does not let the formation of “de facto” decision mechanism next to its.

The key politics concept determined by Amasya Proclamation is the fact of democratic participation. This fact seems against the Kanun-i Esasi. At the end, The Constitution of 1921 (1921 Teşkilat-ı Esasiye Kanunu) transformed the “participation principle approach” proposed by Amasya Decisions, to constitutional rule of “sovereignty belongs to nation” [21-30].

(2) Congress Power and Constitutional Thesis

The National Congress of Erzurum opened a large forehead with its activities: It cared with “national installation and organization”. Congress’ function was to

solve the problems of “The Defence of Rights of Eastern Anatolia” but the fundamentals of the struggle of independence and freedom were determined there. The first model of the Turkish Republic was prepared there. The political and legal principles of modern Turkish State were determined there [2,4,28,30,31].

The National Pact is the result of Anatolia Congresses. It was argued in Erzurum and reflected to decisions, it was transformed into the theory of the Defence of Rights movement in Sivas. It can be said that it was in the degree of a Social Agreement. Its principles are the principles determined in Amasya, processed in congress, accepted as a general rule in the institutions of Representative Committee and “Grand National Assembly Government”, and had the content the covering of the thesis of national state. The National Pact declared in the end Ottoman Parliament and it is a decision of parliament. This decision contradicts with Osmanlı Kanun-i Esasi. Desire of being a nation in a political sense was approved first time in an indirect way (Article 1) [3,7,12,26,32-34]. Determination of situation about the element of country was made: “Elviyei Selase”, İstanbul and Straits belong to this country. The introduction part of the National Pact Declaration refuses the every sort of privilege (=Kapitilasyonlar) and reflects the ideological bases of state as humanrights (democracy), nationalism and westernization.

Every probability was determined in Erzurum National Congress [1,3,12,28]. The most important congress approach constituonal principles was processed with congress declaration. For example, “Kuvayi milliyeyi amil ve milli iradeyi hâkim kılmak” (Article 2), “hukuk-u milliyeyi” (Article 4) etc.

While Amasya Meeting reflects the fundamentals of military resistance, The Erzurum Congress realizes the formation of “de facto” political institution.

The Congress of Erzurum was opened in the presidency of Atatürk. Atatürk (in his this first congress conversation) explains the important two fundamentals of the Turkish Revolution: **National rights** and **national will**. The Congress was the first sign towards national unity, independent from İstanbul for independence struggle. What is the mean of this? It was to break off the İstanbul Government or a first symptom.

The first fundamental provides the formation of new decision institutions by virtue of the other. National unity motif desired by Amasya Declaration was hardened in Congress. Congress became the starting point of organized National Struggle. Decisions forms the struggle principles.

“Osmanlı vatanının tamamiyeti ve istiklal-i milliyemizin temini” (Article 2) principle demonstrates

that regional defence was spreaded all around the country. Congress proposed the institution of a “temporary government”. When it is necessary, this government would go on with existing regulations. And all administration mechanism would be dependent on this institution (=Heyet-i Temsiliye). That means to say that, so Congress has an important result in providing “unity” and “authority”. After this time, another authority was formed in Ottoman structure. And also conflicts occurred between institutions. Erzurum Congress Regulation demonstrates that it contained also judgement power.

At last, “de facto” a power was born from the act. This power can take a decision, apply and judge [1]. The Start of National War of Independence was declared in Erzurum [35]. As a political aim “country integrity” and “national independency” principles found their equivalent in a decision organization (congress) based on election. Here was determined the organization necessity of the national forces. “Army-folk” dialogue began seriously. Instead of personal sovereignty, the assesment of national sovereignty thesis in constitutional sense was made here. National defence principle is leveled up to a situation based on authority. It is emphasized the governments which are not based on the national sovereignty can not remedy. “Principle of national assembly” is repeated.

Main principle, the Congress of Erzurum which were to perform of national will (declaration /beyanname Article 2) can be defended as possessing “selahiyet-i tammeyi” in the name of Turkish Nation [5]. This Congress built a set in front of enemies with the principle of national sovereignty. This concept promised a “parliamentarism” that was enough to “nation theory”. It can be said that the Congress of Erzurum formed all principles of future in constitutional sense [36,37].

What is the geographic and politic base and aim of the Anatolia National War of Independence? The answer of this question is that the geographic borders of the society which was defined as nation, here is Anatolia and the aim is founding an independent state.

“The Government of İstanbul” declared that the Congress of Erzurum was contrary to Kanun-i Esasi (The Constitution of 1876) [1,3,4]. Against this, the Congress declared that the government had acted against Kanun-i Esasi and reminded that the Ottoman Assembly had to gather [1] for one year.

Essentially it can be seen that Kanun-i Esasi was face to face with 3 kinds of violation:

(a) Out dynamic violation,

(b) The situation of central governments to be collaborator, the fact of government gave up from written functions in Kanun-i Esasi,

(c) The “de facto” Approaches of Congress of Anatolia resistance societies and mobilization announcement.

The National Congress of Erzurum founded the first folk organization in Anatolia. This Congress was placed with the Society for the Defence of the Rights of Anatolia and Rumelia one month later. Certainly, the most important organ of this society as theoretical was its Congress. The Congress approved the decision taken in Erzurum and realized changes in the way of the aim. The National Pact was accepted with the stronger ties. The principles which were born in Amasya and found their equivalents in Erzurum, was cleared a bit more. For example, the declaration of revolution that were made in Amasya got started the oposition against to the Central Authority and in new case this situation was reflected also to the military occupiers. While Erzurum formed the political identity, Sivas assumed its definite attitude. The Congress of Sivas was a national congress. And the administration of this congress was national. The existing regulations are accepted to be applied in this Congress. The National Congress of Sivas attracted all the attentions to violation of Kanun-i Esasi. The executive organ is the Representative Committee. It symbolizes “de facto” an administration [1,3,6,8,15,28,30,38-41].

II. FIRST GRAND NATIONAL ASSEMBLY (GNA) PHASE AND THE CONSTITUTION OF 1921 (1921 TEŞKİLAT-I ESASİYE KANUNU)

II.1. Inauguration Of GNA And First Attempt For Government

The fact of Anatolia Turkish National Struggle Administration created the first GNA in 23 April 1920 and so transformed the “de facto” power of National Struggle to the “de iure” power or completed its formation in a legal way.

What are the steps of reaching to this important phase?

- (a) The National Congress of Erzurum,
- (b) The National Congress of Sivas,
- (c) The overthrow of Istanbul Government (Damat Ferit Government),
- (d) Election of the Ottoman Parliament (Meclis-i Mebusan) and providing of inauguration of this assembly,
- (e) **Election** and inauguration of first Turkish GNA.

These political development steps which were the most active phases of the national history and birthscenes were nothing but a new search of political power.

Inauguration of the new assembly in Ankara was the first sign of a new state.

Qualities of this assembly (GNA) :

- (a) Assembly which was formed by double election,
- (b) First Assembly which mentioned in the capacity of “Grand”,
- (c) Constituent Assembly (Meclis-i Müessisan) is GNA,
- (d) Assembly that is duality in its aim,
- (e) Democrat Assembly,
- (f) Assembly which has the quality of countinuty,
- (g) GNA that symbolizes the dictator, hero and pure representative regime [1].

First Turkish GNA (I. TBMM) transformed the Representantive Committee which was the Executive Council of the Defence of Rights of Anatolia into the Executive Council of GNA.

Together with the inauguration of the GNA in Ankara, the most important fact that has to be emphasized is entering into force of the National Sovereignty Rule of Defense Right. In other words, the greatest institution First GNA which was the result of Turkish National Act of Independence attempted to a constitution act by founding the first highest institution of the State which wanted to be found. The GNA sets with the first decision this high institution (Executive Conclil).

Mustafa Kemel Pasha’s Motion which had a very important place in the foundation of new Turkish State was approved despite pauses. This historical motion which included many historical subject proposed “**The Assembly Government Regime**” based on **the principle of seperation of powers.**

It is determined that members who left the General Assembly and would be given representativeness be charged according to principles of division of labour and each would be responsible for the Assembly.

In short MOTION includes these constitutional steps:

- i. Foundation of government is obligatory,
- ii. Formula of the State without head,

iii. Legislation and Execution authorities gathered in GNA and the Executive Council which was formed with the election of GNA (Heyet-i Vekile- The Council of Ministers) executes governmental functions.

The “first temporary government” is found by virtue of national sovereignty in 25 April 1920. “Temporary Execution Councilor” took the place of “the representative committee” [1,26,33,40,42-44].

II.2. The Development of The Constitution of 1921: Legalization of National Struggle Administration (“De Iura” Phase)

One of the important works of the first GNA is certainly the Constitution of 1921 (1921 Teşkilat-ı Esasiye Kanunu).

First concept that we are perceived when constitution is pronounced, is its ideological position which reflects the style of basis organization in a narrow and large sense. It is composition reflecting socio-politic, socio-economic formations and constitutional thesis formed by society in general principles. It is the main source providing the state and society’s administration by giving energy [45-47].

The substructure of 1921 Teşkilat-ı Esasiye Kanunu was realized with Congress Phase (Preparation Part of Anatolia Organization Event). For example, the base of the rule of “hâkimiyet bilâ kaydü şart milletindir” was formed from the constitutional approach of “kuvayı milliyeyi amil milli iradeyi hâkim kılmak esastır” (This principle was produced by Erzurum Congress) [1,48].

At last, ATATÜRK’S POPULISM PROGRAM was presented to the GNA in the name of “government declaration” and this declaration was accepted by the name of 1921 Teşkilat-ı Esasiye Kanunu. This code resembles to a calm bay which has no detail (but it was discussed 4 month and accepted). The number of this law is 85. It does not look like modern constitutions.

“This code is not distinguished because of its small appearance. It is like writing ‘FATİHA’ over a piece of rice. This is so much important”.

“Today, we are writing index of a great history”.

These sentences that took place in records seem to reflect enough the importance of this constitution. Despite it had to assimilate a dilemma structure, the first article, which includes its real mission, was based on a simple support that can resist all pressures from out.

First Assembly was formed with deputies came from Ottoman Assembly and also deputies determined by election realized in Anatolia. And this Assembly had applied THE FACT OF A REGIME WITH TWO CONSTITUTIONS which was never seen before in constitutionship [49]. That’s because Kanun-i Esasi was also in force. But this constitution including 24 articles had very different fundamentals. The most revolutionary principle of this constitution is NATIONAL SOVEREIGNTY (“Hâkimiyet kayıtsız şartsız milletindir”). Despite it has no rule about “sultanate”, its the rule of 1.article was contrast with monarchy which was based on personal sovereignty. Legislation, execution and even judgement were gathered in THE GNA (Article 2).

We can determine the differences of this 1921 Teşkilat-ı Esasiye Kanunu:

a) Democracy Principle: This principle can be took out in first article. When the nation on one’s own or by himself take its governing, destiny and sovereignty up, this is nothing less than the principle of DEMOCRACY.

b) Unity of powers (tevhidi kuvva) Principle: The real and only representative of the nation is The GNA = BMM (Article 2,9). It assimilated “teşri” and “icrai” authorities. “State Presidency” institution was not accepted. In order for Great Revolutions to be realized fast and effectively, history demonstrates that all authorities were gathered in one institution.

It adopted the principle of unity of powers with the accepted constitution. The expression “sole representative” of nation, includes an important function: Superiority of Assembly. This situation is to identify oneself with the result of National Will. All the authorities were gathered in the Assembly. These authorities can not be transferred. For example, EXECUTION is a mission. Even a little leakage which can effect to the GNA of Turkey damages the position of being “ sole representative”.

c) Assembly Government System: In short, execution and administration authority belongs to Assembly. So that, the “Turkish State” is governed by means of the GNA and its government takes the name of “BMM= GNA government”.

It is not parliamenter and presidential. That’s because all powers were gathered in spiritual personality of the Assembly (Article 2). To be governed of Turkish State by

GNA and carrying the name of “BMM government” (Article 3), and the formation a gathering assembly legislation, execution and even judgement powers are named in political dictionary as “ASSEMBLY GOVERNMENT” (If legislation and execution powers are gathered in one institution regime of unity of powers (tevhidi kuvva), if they are undertaken by different institutions then regime of Separation of Powers (tefriki kuvva) emerge. Occuring of unity of powers can be seen by gathering of legislation and execution either in legislation or in execution. If legislation and execution powers are gathered in Execution Institution, absolute monarchy and dictatorship regimes are subject of system. If, however, these two powers unites in legislation then Assembly Government System occurs) [50].

Declaring of the First GNA that it is “sovereignty” (to lay hands on) for everything, can demonstrate “**regime of pure assembly government**”.

Having looked at the classification of regimes by Classical Constitutional Law if we return the Government System of the First GNA of Turkish; the condensation of powers in assembly; selecting one by one of ministers (heyet-i vekile) can be appointed and always can be changed of ministers or to orient (8.article); the inability of Execution Institution and assembly can not dissolve by execution; besides, “the formula of state without head” principle bring us to the regime of “pure assembly government”.

Democracy Assembly of Turkish National Struggle had used its authorities carefully. The Council of Ministers has always taken great pains to the competences. Turks, in their history, they had applied Assembly Government way (1920–1923) and realized a democratic administration in this system. We can see this. But it could be seen some separations from this model in application.

d) “Representation” Principle: It is clear that “national sovereignty” will be used, because the code of 1921 includes democratic approach. In this stage of National Independence, “struggle” and “revolution” occured and continued. . It was impossible that people could use “executionary sovereignty” directly. Therefore was necessary a government method to accept in the direction of representative sovereignty. That’s because why 1921 Constitution anticipated “representation” principle (Article 3,4,5) [5].

e) For the first time Adopting of one Assembly: The Ottoman Constitution of 1876 adopted two assembly systems. But 1921 Teşkilat-ı Esasiye Kanunu accepted one Assembly system and Assembly Government regime. This was unavoidable for the logic of the revolution. Enemy had come until Ankara. Two assembly systems were not suitable for this case. This Assembly has to be

one and a war Assembly. In this Assembly there are not parties in today’s sense. However, after inauguration of Assembly, I. GROUP and II. GROUP separation will be occured. First group supported Atatürk and the government. The other group was opposition. But there was not a definite line between them. Sometimes they supported each other in votings. The only aim was saving the Country. However there was not a unity in politics which will be followed after salvation. Partisans of the I.Group defended republican and revolutionary changes, on the other hand opposition wanted to protect the Sultanship institution and social changes to be evolutionary.

Against opposition, “formula of state without head” was adopted and at first not talked about the abrogation of Sultanship. After war, The GNA had taken two decisions (Number 307,308 and date, 30 October, 1-2 November 1922) and determined that Empire was a thing of the past. However Republic word was not pronounced [1].

f) To accept an assembly principle that is continuous gathering: In short, until new(= lâhik) assembly comes instead of old (=sabık) assembly, old assembly would continue to realize its function. This situation is called “istimrar” (=continuity) principle. This principle caused hard discussions. The aim was maintaining of activities and continuity or not to let without activities and government of state [1,32].

g) Another One Contradiction of Code: Code did not separate the religion and world affairs (Article 7). Democracy takes into consideration all citizens of the State. “Ahkâm-ı şer’iyenin tenfizi” is for Muslims. This means that State has a religion. Of course this, it reflects the GNA’s structure. Particularly, here there are the role of the theological scholars.

h) Administrative Decentralization Principle (Adem-i Merkeziyet İlkesi): It can be said that Institutions in the administration part of the code contains fundamentals of populism movement of time. It may have been thought that administration would be given to people thanks to principle of Adem-i Merkeziyet. However we can see that administration part (Article 11–21) did not enter into force. In my opinion, programs of cligueship that occured in and out the Assembly reflects to the Constitution of 1921 [1,32].

i) No anticipation a rule in relation to “the Seat of Presidency of the Republic: To see fit of “the formula of state without head” constitutes characteristic one direction of the this code.

j) Aim for Saving Sultanship-Caliphship Institution: This problem that caused hard and important

discussions is reflected to the Constitution of 1921 as “madde-i münferide”.

III. OFFICALLY LEGALIZATION OF THE REPUBLIC BEFORE THE CONSTITUTION OF 1924- MODIFICATION OF THE CONSTITUTION OF 1921 BY ENLARGING

Having realized national representation, it must be underlined that First Turkish Grand

National Assembly is the preparer of the 1921 Constitution (This is the second written constitution). This constitution that was made in a process of crisis approved the Assembly Government regime which is a kind of application form of representation system. Actually this style of approach was nothing less than a temporary regime which was found to carry the National Struggle to the victory. Especially after war, this system fact that founded and deficiencies of the 1921 Constitution, it makes feeble the application of regime (because, the regime of Ankara has normalized), and the government crises when transformed into constitutional crisis, events developed fast. This by leaps and bounds, finally (as only one solution) on 29 October 1923 Republic was declared.

Tevhidi Efkâr newspaper which was famous with all the time opposite publications, on 30 Tesrinievvel 1923 and wrote those:

“Buhran-ı hükümet (vükela) pek ani bir şekilde tebdil-i mahiyet ederek şekli hükümet ve Cumhuriyet meselesi haline inkılâp etti” (All at once the government crises had transformed into the government form and republic problem) [51].

Actually, the inauguration date (23 April 1920) of the first Assembly can be commended as the beginning of the Republic. That's because the approach of Grand National Assembly Government was based on the principles of national sovereignty and assembly superiority. Such a system could not be together with the Monarchy. Much more important thing, essentially the first article of the 1921 Constitution reflects “**Sovereignty belongs to the nation unconditionally**”. This rule can reflect the principle that the republic based on. When first assembly put the Sultanship out force in 1922 (the number of decisions: 307,308) [52]. An important step was recorded in the way of the “Turkish State” (Article 3) which placed in 1921 Constitution: The mean of this, sooner or later will be gone to Republic. After this time there was no doubt to give the name to the new born child.

Although 1921 Constitution determined that sovereignty belongs to nation, there was no rule about how it would be used and by whom it would be used.

Emphasized Assembly Decisions (number 308) [53] with its identity included in constitutional frame, demonstrates the Grand National Assembly for producing rule, ordering which were towards to the source of sovereignty.

At last, First Assembly decided to the abolition by himself for new election in April 1923. After II. TBMM starts to work, government crisis appeared in Ankara. In order to find solution to the problem one code was put in work that legalized the republic officially: “**364 Sayılı (29 Ekim 1923) Teşkilat-ı Esasiye Kanununun Bazı Mevaddinin Tavzihan Tadiline Dair Kanun**”. New term assembly was not a founder assembly. However, it did not hesitate to behave like a founder. New code adds an expression to the 1. article of the 1921 Constitution: “**The government form of the Turkish State is a Republic**”. Constitutional change that declared the republic word used the expression of “The President of the Republic of Turkish” first time and determined “the president of the republic” is elected by Grand National Assembly (Article 10). Another distinguishing point is that “TURKEY word” took place first time in a constitutional code. According to this code the President of the Republic selects prime minister. And BY MEANS OF PRIME MINISTER offers ALL MİNİSTERS (Council of Ministers) to the approval of the Assembly. This competence is of the President. This means that ministers were provided to approach to the identity of cabined. “Approval” word in code means ‘**vote of confidence**’. Even confidence is not like in classical meaning, a personal vote of confidence of the prime minister and minister is necessary. Assembly, therefore, gives visa with approve [54,55].

President is elected for one term. He continues to work until new one starts. He can be elected again (Article 10). With these rules “**formula of state without head**” reaches to end [1].

Event of election of the prime minister and ministers indicates that there is an approach to parliament system of today. However, against expected evolution process, constitutional change protected the origin of Assembly Government. “**A hibrit administarion**” [42] is in force. The reason of this was defending “**national sovereignty**” principle in II. Grand National Assembly. Principle of assembly superiority was not left.

In this change by enlarging the constitution, the expression of “executive organ” began to be used. There was positive law approach in old text (Article 4,5,7,8) [56,57]. In these rules there was not “**executive organ**” but “executive power”. This power was in Assembly. Executive Council which was an “ajan-commis” in functions that was done in the name of Assembly reached a little bit autonomy by this change [1,56,57]. Actually, in an 14 April 1923 dated assembly decision, the expression “prime minister is responsible together other

ministers” had been determined. New enlarging change fact demonstrates, a- Approach to parliamentarism, b- President of the Republic could do the presidency of the assembly if necessary (Article 11). Assembly Government system still continues (Article 4).

IV. CONCLUSION

In short, The Administration of Turkish National Struggle was completed in two periods:

A- Temporary Government (Representation of the society for the defence of the rights of Anatolia and Rumelia) or “**de facto**” phase.

B- Transformation to legal period (Legalization of the Administration of Turkish National Struggle) or “**de iura**” phase.

In the first phase, the NATIONAL SOVEREIGNTY WILL has been densely reflected in Anatolia. We can see this principle in a lot of decision.

Essentially this principle (We can see “the national sovereignty principle” in a “Heyet-i Ayan Kararnamesi” of 1909. So says there: “Relization of national sovereignty and constitutional government...”). was accepted also in Ottoman General Assembly, and again this Assembly accepts **The National Pact** with the intense political efforts of the nationalist and Anatolia Nationalism. In fact, this success belongs to the Society for the defence of the rights of Anatolia and Rumelia. The National Pact is a Ottoman Parliament Decision. Moreover it was formed a contrast to the Constitution of 1876.

At last the National Pact Doctrine [3,12,26,32,33,58,59], after from Amasya, Erzurum and Sivas Congresses runs to the First Turkish GNA.

During second period which is a natural constitution of the “Temporary Representation” phase, there have been two government phenomenon inside and outside the country. This situation was due to the fact that the Ottoman Empire was not abolished by the Armistice of Mudros (Oct 30, 1918). Scope of the Empire Authority has decreased and its influence has weakened. We can see this from existence and continuation of some of the state authority (for example, in carrying out the budget even after the Armistice).

Legal and real existence of the Istanbul Government has been damaged by the opening of the First GNA (actual power of the Empire was shaken by the GNA).

The GNA Administration was formed with deputies who came from Ottoman General Assembly and also deputies determined by election realized in Anatolia. And this Assembly had a feature which was never seen before in constitutionship history that is the fact of regime with two constitution. That’s because Kanun-u Esasi was also in force.

The GNA has put the 1921 Teşkilat-ı Esasiye Kanunu into force but the strength of GNA comes from the practice of both 1876 Kanun-u Esasi and 1921 Teşkilat-ı Esasiye Kanunu simultaneous. Also, let’s say, the Constitution of 1921 was completed degree, written degree and laws... For example, the executive council code, the GNA decisions (The existence of the Ottoman State has ended with 1921 Teşkilat-ı Esasiye Kanunu and this decisions of the First GNA) [52,53].

The second constitutional period (the Legalization Phase) of the Administration of National Struggle was replaced gradually by 1921 Teşkilat-ı Esasiye Kanunu.

This Constitution has been founded the Assembly Government System. In short, execution authority belongs to The GNA. So that, “Turkish State” is governed by means of BMM (GNA) and its government takes the name of “BMM Government”. It is not parliamentary and presidential. All powers (legislation, execution and even judgement) has been gathered in this “Government”. The form of this regime can demonstrate “regime of pure assembly government”. However, we can see that administration part of 1921 (Article 11-21) did not enter into force.

In this system was not proposed of state presidential seat. After the War of Turkish National Independence, the GNA had taken two decisions (number 307,308; Oct 30, 1922 and Nov 1-2, 1922) and determined that “Sultanad” was a thing of the past. But “republic” word was not pronounced.

In the end, the First GNA decided to disintegrate for a new election in April 1923. After II. GNA starts to work government crises emerged in Ankara. In order to find solution to the problem one code was put into force that legalized the republic officially (Number: 364) [1].

In this change by enlarging the constitution (1921 T. E.Kanunu), “executive organ” expression began to be used. Executive Council which was an “ajan-commis” in function that was done in the name of the GNA reached a little bit autonomy by this change.

New enlarging change fact can demonstrate,

—Approach to parliamentarism,

—President could be head of the Assembly if necessary (Article 11).

But Assembly Government System still continues (Article 4).

New code adds an expression to the 1. Article of the 1921 Teşkilat-ı Esasiye Kanunu: “**Turkish State is a republic**”. For the first time, this code determined the President of the Republic is elected by the GNA (Article 10). From now on, the President has the authority of choosing prime minister and representing the ministers to the approval of the GNA by means of prime minister. This means that ministers were provided to approach to the identity of cabinet.

“Approval” word in code means “**vote of confidence**”.

From now on, the personal vote of confidence of the prime minister and ministers are necessary.

But, against expected evolution period, constitutional change protected the origin of the GNA Government.

“A hibrit administration” is in force. Principle of assembly superiority was not left.

REFERENCES

- [1] Memiş, E. (1999). *Milli Mücadelenin Hukukileşme Süreci*. İstanbul: Filiz Kitabevi.
- [2] Velidedeoğlu, H.V. (1981). Atatürk’ün Örgütlenme Gücü, ATATÜRK 100 YAŞINDA. *Milliyet-EK*, 28 Haziran, 8-9.
- [3] Atatürk, K. (1972). *Nutuk I. 1919-1920*. 12. Bası., İstanbul: Milli Eğitim Basımevi.
- [4] Atatürk, K. (1961). *Nutuk III, VESİKALAR*. TDTE. İstanbul: Milli Eğitim Basımevi.
- [5] (1981). *ATATÜRK’ÜN SÖYLEV ve DEMEÇLERİ I-III, 1906-1938*. 3. Bası. Ankara: DTCF Basımevi.
- [6] Bıyıkoğlu, T. (1981). *Atatürk Anadolu’da, 1919-1920*. 2. Bası. İstanbul: Kent Basımevi.
- [7] Tunaya, T.Z. (1952). *Türkiye’de Siyasi Partiler, 1859-1952*. İstanbul: Doğan Kardeş Yay.
- [8] Kili, S. (1981). *Atatürk Devrimi, Bir Çağdaşlaşma Modeli*. Ankara: Türk Tarih Kurumu Basımevi.
- [9] Necmeddin, S. (1918). Nazik Zaman. *Akşam*, 6 Teşrinisani.
- [10] Özalp, K. (1971). *Milli Mücadele, 1919-1922*. I. Ankara: Türk Tarih Kurumu Basımevi.
- [11] (1963). Batı Cephesi, Kısım 1. *Türk İstiklal Harbi*. Cilt: II. Ankara: Genel Kurmay Harp tarihi Başkanlığı Yayınları.
- [12] Mumcu, A. (1976). *Tarih Açısından Türk Devriminin Temelleri ve Gelişimi*. Ankara: Sevinç Matbaası.
- [13] Villalta, J.B. (1982). *Atatürk*. Ankara: Türk Tarih Kurumu Basımevi.
- [14] Coşar, Ö.S. (1919). *İstiklal Savaşı Gazetesi*, Milliyet Eki, (16,24 Temmuz Sayıları–1919).
- [15] Selek, S. (1976). *Anadolu İhtilali*. İstanbul: Yelken Matbaası.
- [16] İlhan, A. (1981). *Hangi Atatürk*. İstanbul.
- [17] Yüzbaşıoğlu, M. (1981). *Atatürk’ü Anmak*. İstanbul: Remzi Kitabevi.
- [18] Karamustafaoğlu, T. (1975). 20 Ocak 1921 Teşkilat ı Esasiye Kanununun 7. Maddesi Üzerinde Bir İnceleme. *Mahmut Koloğlu’ya 70. Yaş Armağanı*. İstanbul: Sevinç Matbaası.
- [19] (1944). *TBMM Zabıt Ceridesi*. Cilt: VII, 327–331. Ankara: Türk Büyük Millet Meckisi Matbaası.
- [20] (1942). *TBMM Zabıt Ceridesi*. Cilt:V, 370. Ankara: Türk Büyük Millet Meckisi Matbaası.
- [21] Coşar, Ö.S. (1919). *İstiklal Savaşı Gazetesi*, 19, 24 Haziran 1919, 26-27 Ağustos 1919, 30 Temmuz 1919.
- [22] Belen, F. (1973). *Türk Kurtuluş Savaşı*. Ankara: Başbakanlık Basımevi.
- [23] (1919). *Söz*, 25 Kânunusani 1335.
- [24] (1919). *Tarik*, 75, 2.
- [25] Kaynar, R. (1981). Atatürkçülük’te Araçlar ve Amaçlar. *Atatürk ve Zamanı Semineri*, İstanbul, 25 Ekim.
- [26] Ağaoğlu, S. (1973). *Kuvayi Milliye Ruhu*. İstanbul: Baha Matbaası.
- [27] Kinross, L. (1980). *Bir Milletın Yeniden Uyanışı*. (Çev.: Tezel, A.). İstanbul: Sonder Yayınları.
- [28] Nadi, Y. (1978). *Kurtuluş Savaşı Anıları*. İstanbul: Erdini Basımevi ve Yayınları.
- [29] Irmak, S. (1974). *Atatürk ve Çevresi*. İstanbul: Sermet Matbaası.
- [30] Ergil, D. (1981). *Milli Mücadelenin Sosyal Tarihi*. Ankara: Turhan Kitabevi yayınları – Çağ Matbaası.

- [31] Jeschke, G. (1993). Kundgebung des Kongresses von Erzurum. *Mitteilungen des Seminars für Orientalische Sprachen*, Berlin.
- [32] Atatürk, K. (1972). *1920-1927, Nutuk II*. 12. Bası. İstanbul: Milli Eğitim Basımevi.
- [33] Tunaya, T.Z. (1981). *Devrim Hareketleri İçinde Atatürk ve Atatürkçülük*. İstanbul: Turhan Kitabevi.
- [34] (1920). *Meclis-i Mebusan Zabıt Ceridesi*. 115.
- [35] Coşar, Ö.S. (1919). *İstiklal Savaşı*. 8 Ağustos.
- [36] Coşar, Ö.S. (1919). *İstiklal Savaşı*. 5 Temmuz.
- [37] Aydemir, Ş.S. (1977). *Tek Adam*. Cilt: II. İstanbul: Remzi Kitabevi .
- [38] Coşar, Ö.S. (1919). *İstiklal Savaşı*. 13 Eylül.
- [39] Coşar, Ö.S. (1919). *İstiklal Savaşı*. 19 Eylül.
- [40] Goloğlu, M. (1969). *Sivas Kongresi*. Ankara: Başnur Matbaası.
- [41] İğdemir, U. (1969). *Sivas Kongresi Tutanakları*. Ankara: Türk Tarih Kurumu Basımevi.
- [42] Okandan, R.G. (1962). Milli Hakimiyet, Milli İrade Mefhumlarının ve Kuvvetler Birliği Sisteminin Esas Teşkilat Hukukumuzda Girişi. *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*. XXVII, 21-23.
- [43] (1940). *TBMM Zabıt Ceridesi*, Cilt: I. Ankara: Türkiye Büyük Millet Meclisi Matbaası.
- [44] Bıyıkoğlu, T. (1960). Birinci Türkiye Büyük Millet Meclisinin Hukuki Statüsü ve İhtilalci Karakteri. *Bellekten*. XXIV(96), 635-655.
- [45] Eroğul, C. (1974). *Anayasayı Değiştirme Sorunu (Bir Mukayeseli Hukuk İncelemesi)*. Ankara: Sevinç Matbaası.
- [46] Tunaya, T.Z. (1980). *Siyasi Kurumlar ve Anaya Hukuku*. İstanbul: Fakülteler Matbaası.
- [47] Kubalı, H.N. (1969). *Anayasa Hukuku Dersleri*. İstanbul: Kutulmuş Matbaası.
- [48] Abadan, Y.(1960). Die Entwicklung des Verfassungsrechts der Türkei. *Jahrbuch des öffentlichen Rechts- NF*, 9.
- [49] Memiş, E. (1988). 1921 Teşkilat-ı Esasiye Kanunu Üzerine Doğan İlginç Bir Şekil Sorunu ve İki Anayasalı Rejim Olgusu. *İstanbul Hukuk Fakültesi ve İdare Dergisi*, (1-3), 217-241.
- [50] (1922). *Düstur*. Cilt: II, Karar: 232. February 1338.
- [51] (1923). *Tevhidi Efkar*. 30 Teşrinisani 1339.
- [52] (1992). *Düstur*. Cilt: III, Decisions: 1 Teşrinisani 1338 (No:307)
- [53] (1992). *Düstur*. Cilt: III, Decisions: 2, Teşrinisani 1338 (No:308).
- [54] Armağan, S. (1978). *1961 Anayasası ve Bakanlar Kurulu*. İstanbul: Fakülteler Matbaası.
- [55] Aldıkaçtı, O. (1968). *Anayasa Hukukumuzun Gelişmesi ve 1961 Anayasası*. Cilt: 1. İstanbul: Özdemir Basımevi.
- [56] Tunaya, T.Z. (1956). Reisicumhurun Hukuki ve Siyasi Durumu. *CUMHURİYET*, 26 Ocak.
- [57] Duran, L. (1950). Reisicumhurun Nutku ve İstizah Usulü. *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, XVI(1-2), 202-204.
- [58] (1920). *Meclis-i Mebusan Zabıt Ceridesi*. İçtima Fevkaleda, 17 February.
- [59] (1980). *TBMM Gizli Celse Zabıtları*. Cilt: I. 24 April 1920 - 21 February 1921.

Emin MEMİŞ (eminmemis@mynet.com) has Ph.D of Constitution Law at İstanbul University. He is an Associate Professor at Marmara University. His research areas are constitution law and administration law.