

## **The Demand For a New Constitution In Turkey and Its Limits**

Seref Iba\*

### **Abstract**

Making a new constitution for more democratic Turkey is a vital issue. Replacing the constitution is an unusual and a fragile issue. It is therefore needed to preserve available political climate. This constitution making process by way of “contraction and organic” method bringing participatory principles into reality requires a soft climate which has “reconciliatory” and “consensus” features. The Constitution of 1982 is still lack of capacity in responding today’s world requirements despite a number of constitutional amendments made over the last quarter. The system of checks and balances is not as effective as it has to be. This current constitution unfortunately bears the traces of military mindset. Even the date “1982” reminds the society of military intervention over the peoples’ will whenever it is called. The military played a very crucial role in founding of the Republic and have since then been the staunchest defenders of the Kemalist legacy, most importantly his principles of a united, secular, nation-state. It is therefore important to make a new constitution to diminish the negative perception about Turkish constitutionalism.

**Keywords:** Constitutionalism, the Constitution of 1982, new constitution, Grand National Assembly of Turkey, Military tutelage.

---

\* Lecturer (half time) at constitutional and parliamentary law, Law Faculty, University of Hacettepe.

## The Demand For a New Constitution In Turkey and Its Limits

---

### I. Demand For A New Constitution In Turkey

In the 24<sup>th</sup> term parliamentary general elections, making a new constitution has become the main subject for almost all political parties. "A New Constitution" promises have taken the foremost place in the political campaigns. For the Grand National Assembly of Turkey formed after such a selection process, an extraordinary perception of the legislative body which has been given by voters as a mission or role has been created in making of a New Constitution.

Since almost all political parties have expressed that newly formed parliament is going to work on renewing the constitution, the table resulting after the elections has constituted the basis to make a new constitution. Indeed, at the meeting which President of Parliament made with the scientist the very beginning of the legislative period, methods and the ways that would be followed in making the new constitution have been discussed. At this meeting, among the faculty members, different methodological differences have emerged in the new construction of the new constitution. Despite different point of views, Grand National Assembly of Turkey moving on their way with brave steps has preferred staying away the suggestions like the constituent assembly, the constitution making Assembly. With the support of the political parties in the parliament, Reconciliation Commission Formula could be activated in making the new constitution.

The search for harmony and consensus among the political parties for the temporary platform in the form of Turkish parliamentary tradition already can be considered a success in the past and who is available on critical issues is *de facto* signatory to its work and submitted a "Reconciliation Commission" method, a new Constitution had been the gate of hope initiatives.

Chaired by the President of the Parliament with the agreement of the political parties, to make a new Constitution, Reconciliation Commission met, for the first time, on 19 the October 2011. First of all, the Commission has decided their working procedure. Surprisingly, the Commission workings which have planned to be completed by the end of 2012 have resulted failure. The Commission's inefficient and low pace of work, political parties who are unwilling to, compromise in "red lines" have showed that, compromise between the existing parties can party achieved, and it is almost impossible to pen an entirely new constitution.

An important aspect of democratic consolidation is the emergence of a widely shared consensus over constitutional reforms. The stability and longevity of a new constitution will depend in large part on the success of procedural legitimacy. Turkish experience with constitution-making is essentially indigenous. None of the constitutions was made by a broadly representative constituent Assembly through a process of negotiations, bargaining, and compromise.

All five Turkish constitutions were, by and large, the products of indigenous effort. The making of the 1982 Constitution was missed opportunity to create political institutions with broad consensus. Shortly, Turkey offers a rich laboratory for an analysis of the politics of constitution-making.<sup>1</sup>

The most important obstacle to democratic consolidation is the continuing influence of the military over civilian politics. The significant role of the military in Turkish politics is due partly to historico-political factors. Because, the Military played a very crucial role in the founding of the Republic and have since then been the staunchest defenders of the Kemalist legacy, most importantly his principles of a united, secular, nation-state. The historical role gave the military a strong sense of mission of protecting the status quo.

## **II. The Limits of General Expectations**

Checks and balance system should be strengthened by constitutional reform in Turkey. In general, the style of the current constitution is very anxious. This anxious constitutional approach is not only related to those ruled or individuals. Also the Constitution of 1982 has preserved its spirit and paranoid status although so many amendments it has had. With the statement of the Constitution, ‘Fundamental organs of the Republic’ have been regulated by an authoritarianist approach. Balancing systems are inadequate. In short, the current checks and balance system is not successful.

Constitutions resemble a “compass” which helps to find direction or a high technological navigation device helping to find a right address. In this context of new constitutional preparation, it is possible to make an achievement through constitutional provisions and new organs for the future of society.

It is obvious that the proposed constitution will not sort all the problems out in a radical way. It is also not rational to pass trends in constitutional literature into Turkey’s system without adjusting them either. Turkish society has an ability to realise a historical success by adopting a new constitution which provides moral value and a driving force.

New trend in constitutionalism is “process constitutionalism”. A constitution made as a result of democratic and participatory process does have democratic content as well. Based on this

---

<sup>1</sup> Ergun ÖZBUDUN and Ömer Faruk GENÇKAYA. **Democratization and Politics of Constitution-Making in Turkey**, CEU Press, New York & Budapest, 2009, p.4.

## The Demand For a New Constitution In Turkey and Its Limits

---

assumption, this constitutional approach will be one of the leading formal sources legitimating the system. Another point that has been becoming a rising value is to pass administrative practices and factual reflection into daily life by way of a new constitution. A catalogue prepared by an understanding with right based instead of mission is a universal criterion whether human rights record is successful or not.

The constitution of 1982 is a constitution of “*yes, but constitution*” due to its authoritarianist feature in terms of human rights. It is essential to get free from “formalist” and “misleading” understanding of the Constitution of 1982 which commences with “yes” while recognising and regulating the rights in the fundamental rights freedoms catalogue and which continues “but” by putting rigid restrictions. Turkish society deserves a new constitution with universal human rights standards and advanced democracy.

Replacing the constitution is an unusual and a fragile issue. It is therefore needed to preserve available political climate. Making a constitution by way of “contraction and organic” method bringing participatory principles into reality requires a soft climate which has “reconciliatory” and “consensus” features. The discourse of “civil constitution”, which is endemic in our society, needs a preparation process that is compatible with its name. Constitutional preparations should be a special area rather than ordinary regulations that the Parliament does.

The argument of “civil constitution” or “new constitution” in Turkey is directly related to the cover of the constitution. Indeed, the argument will not end unless “1982” is removed from the cover. Replacing even the date “1982” has become a goal with motivation value for the society.<sup>2</sup>

The president of the Parliament received 24 professor academics working in the field of constitution on 19.09.2011 and they formulated ways and methodology. The position of the Parliament in terms of methodology of making a new constitution was discussed but a consensus was not achieved at that meeting.

Constitutional lawyers meeting records showed that the formula of “commission of conciliation”<sup>3</sup> was not agreed. Some constitutional lawyers brought “constituent assembly” or “constitution making assembly” to the agenda as well. Besides, the views supporting constitutional revision and the need for a new constitution were dominant in the meeting.<sup>4</sup>

---

<sup>2</sup> Şeref İBA, **Yeni Anayasa Arayışları ve Kırmızı Çizgiler (Efforts For New Constitution and Red Lines)**, Ankara Nobel Yayınevi, 2014, p.23.

<sup>3</sup> See, Şeref İBA, **Parlamento Hukuku (Parliamentary Law)**, İstanbul, İş Bankası Kültür Yayınları, 4. Baskı, 2009, s.36.

<sup>4</sup> (<http://yenianayasa.tbmm.gov.tr/docs/anayasa-hukukculari-ile-toplanti.pdf>)

### **Last words**

The proposed constitution will make the situation much more effective in Turkey. Even the statement of the Constitution of 1982 has been still remind the community of non-civil authority and worsening Turkish democratic structure. It is therefore important to build a more democratic and particularly civil constitution for the country.

## The Demand For a New Constitution In Turkey and Its Limits

---

### REFERENCES

- İBA,Şeref, **Yeni Anayasa Arayışları ve Kırmızı Çizgiler (EffortsFor New ConstitutionandRedLines)**, Ankara Nobel Yayınevi, 2014.
- İBA,Şeref, **Parlamento Hukuku (ParliamentaryLaw)**, İstanbul, İş Bankası Kültür Yayınları, 4. Baskı, 2009.
- ÖZBUDUN, Ergun and Ömer Faruk GENÇKAYA. **DemocratizationandPolitics of Constitution-Making in Turkey**, CEU Press, New York &Budapest, 2009.
- (<http://yeniayasa.tbmm.gov.tr/docs/anayasa-hukukculari-ile-toplanti.pdf>)