

TESEV DEMOCRATIZATION PROGRAM

Making of a New Constitution in Turkey Monitoring Report: *What sort of a constitution are we heading towards?*

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Authors: Etyen Mahçupyan, Mehmet Uçum, Özge Genç
Translated by: Hakan Girginer, Şebnem Girginer

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Introduction

Özge Genç, TESEV Democratization Program

Created as an all-party body by the political parties represented in the Turkish Grand National Assembly (TBMM), the Constitutional Reconciliation Commission (the Commission) has been vigorously engaged in drafting the new constitution since October 2011. Having opened its door to all walks of society in the beginning phases of the process, the Commission has been considering proposals by political parties represented in the Commission on topics for the new constitution since May 2012. Even though public discussions may not always be in line with the Commission's agenda, there are serious expectations for the new constitution in society. During the peace process involving intense negotiations between the state, the government and Kurdish political actors, the focus has once again shifted from the Kurdish citizens' long-established social and political demands to constitutional demands. Establishing a new understanding of citizenship, fulfilling the conditions deemed necessary by different segments of society and moving forward with certainty during the peace process is impossible within the confines of a mono-cultural and authoritarian-nationalist mentality reflected in the existing Constitution and laws.

Having been authorized by the people of Turkey in the June 2012 general elections to draft a new constitution, the TBMM established a Commission with a firm legitimacy base. The Commission resolved to share the constitutional draft, that would be prepared through the consensus of the attending members (equal number of MPs from each political party represented in the TBMM), with the public. Consequently, a legal platform anchoring the legalization process of the new constitution will be established. However, from what is known by the public so far, it has become evident that reaching a political accord on a new draft constitution shall be no small feat. Despite the fact that accord has been established on a multitude of issues, it is quite obvious that no consensus has been reached on a number of standards that will ensure a "new" character for the constitution. These standards include citizenship, the right to life in one's mother tongue, criteria on rights and rights limitations, government system, relations between central and local governments, fair representation, and the judicial system.

The peace process, along with rising expectations from society towards reform and pluralism, may require political parties to revisit their constitutional perspectives and revise their respective constitutional proposals.

As TESEV, we emphasize the expectation of a constitution based on a consensus. While we maintain an equal distance with all political parties in the course of constitutional reform, we certainly appreciate the efforts political parties have displayed in the reconciliation process so far. Nevertheless, in case these political parties choose to insist on their respective current proposals, listed in detail in the first section of this report, it becomes evident that the final product of the Commission will be far from a reformist body of work that addresses the individual, and is based

on the principal criteria of a participatory and deliberative democracy. Therefore, if the Commission fails to achieve an accord, and there is a sufficient pretext to support an opinion that the Commission has in fact “failed”, it becomes necessary to establish how and by whom the constitution shall be drafted, what sort of a text an accord shall be established upon and through which processes such a text will be adopted and become a new constitution. At this exact point, it is especially the responsibility of individuals and social groups to come up with clear positions “on the sort of constitution we want”. In the democratization and pluralization processes we are undergoing today, we indeed have a chance to review and revise such proposals that are not appropriate for the conditions of the 21st century. We are not too late in voicing our expectations about the future in the form of reformist proposals and ensuring such proposals are included in the new constitutional draft.

This report represents the third installment in a series of efforts by the TESEV Democratization Program to monitor the new constitutional process. Our goal is not only to inform the public in matters related to what sort of a constitution is awaiting us but also to encourage the public at large to monitor this process and share their suggestions. As part of our Second Monitoring Report covering the February-June 2012 period, we focused on the work by political parties on the new constitution within the confines of their “no-go zones”, put out a call to parties to adopt the public’s opinions and international standards as guidelines, and dissected proposals brought before the Commission with an analytical eye. In this third report, we examine proposals brought forward by political parties.

Within the first section of the report, political party proposals that could possibly be problematic in reaching an accord and potentially lead to deep fractures are taken into consideration. Factors that facilitate and create a hindrance for the reconciliation of the parties are presented for the reader’s interpretation in an unbiased manner. This section will allow the readers to determine whether proposals brought forward by respective political parties are actually a “reform” or a “restoration in spirit”, and to see which parties are more “reformist” or more “traditional” in their approach towards each respective topic. In this regard, this report will act as a tool in figuring out who is on the same page. At this point, it must be taken into consideration that official proposals are yet to be shared with the public and that they may have undergone changes during ongoing negotiations at the Commission table.

In sections two and three, proposals set forth by political parties are laid on the table for commentary and analyses by the authors in effort to provide guidance for the process. In the second section, while party proposals are taken into consideration in terms of a visionary approach to constitutionalism, whether these proposals have competence to shape a new constitution that will bear Turkey’s future is also discussed. The third and the final sections deal with the sort of a constitution Turkey will be facing, and how this constitution will be shaped, and who will be drafting it in current conditions.

Regardless of which political parties reach an accord towards a draft, and which political players accomplish it, a constitution that is able to represent social unity must be built upon a firm foundation of legitimacy. Such legitimacy is only ensured through a vote at the national assembly, where the people are represented at the highest level, and a public referendum of the constitutional draft within the confines of a new constitutional legislation.

A public referendum ensures the inclusion of the public, including the respective reformist constituencies of the parties less inclined towards reform, in the final decision-making. Even though it may not be possible for all parties to come together and reach a consensus, various mechanisms where democratic and reformist bases of parties are represented may be created.

We hope that such an approach dominates the new constitutional process and that the participation of diverse social segments is guaranteed in the process.

I. Proposals by Political Parties on a New Constitution

Mehmet Uçum, Özge Genç

Proposals set forth by political parties that make up the Constitutional Reconciliation Commission are examined on a comparative basis in this section.

CITIZENSHIP

Only AK Party and BDP are in a position to reach an accord in terms of a citizenship that does not emphasize ethnic identity. It has been observed that both CHP and MHP act insistent on a citizenship definition with ethnic identity connotations.

EQUALITY

It is evident that proposals laid on the table in connection with equality generally share a common denominator in the form of an approach geared towards eliminating arbitrary discrimination. By utilizing sexual orientation and gender identity criteria, both BDP and CHP make room for a more comprehensive equality proposal. On top of that, BDP chooses an equality definition that aims for the elimination of arbitrary discrimination towards ethnic identities by utilizing an “ethnic background” criterion, in addition to “race”.

Proposals by all parties on equality fall within the same lines as the international treaties.

RIGHT TO LIFE IN ONE’S MOTHER TONGUE

Proposals set forth by political parties on topics such as the right to defend one’s self, freedom of speech and expression, freedom of the press, the right to an education, children’s rights, and the right to use the mother tongue have been taken into consideration. The most progressive and comprehensive proposals on the right to life in one’s mother tongue have been laid on the table by BDP. In this regard, providing a statement and making a case for defense by a suspect and the accused in the language of their choice at the investigation and legal proceedings stage is one of the proposals brought forward. AK Party’s proposal is limited with the right to utilize a translator “in cases where the individual is unable to speak or comprehend the official language”. However, since the legal reorganization in January on the right to defend one’s self in the mother tongue has introduced the right to deliver an oral defensive statement “in a different language per the defendant’s statement that the defendant will express himself or herself better”, AK Party’s proposal falls short of this particular right introduced by AK Party itself. In other words, by passing the said law, AK Party has demonstrated that its position is ahead of the proposal they have submitted to the Reconciliation Commission.

Concrete evidence of a connection between the right to mother tongue, and freedom of speech and expression, freedom of the press, the right to an education, and children’s rights is obvious in

BDP's proposals. BDP embodies an individual's right to express themselves "in a preferred language", the right to an education in mother tongue by everyone, and the right "to benefit from their own culture and use their own language" by children as the content of the right to life in one's mother tongue. Furthermore, a requirement to exercise "the right to mother tongue" while accessing public services is also included in BDP's proposal. BDP proposes for the existence of an independent constitutional rule (article) in the form of a general right to use the mother tongue, in addition to including this proposal in relevant sections.

AK Party, CHP and MHP do not allow for a "preferred language" concept within the confines of freedom of speech and expression, and freedom of the press. Regarding the right to education, CHP suggests that necessary measures should be taken in connection with "education in the mother tongue". AK Party and MHP have no suggestions in this regard. Only AK Party takes a step towards education in the mother tongue albeit in a veiled manner by removing a prohibitive clause in the current Constitution stipulating that no educational activities may be carried out in a language other than the official language. Whereas MHP actively supports the preservation of the status quo (the ban) established by the 1982 Constitution.

The right to one's mother tongue is incorporated in international treaties and includes the rights to establish direct relation with the mother tongue of the child's birthplace, using this language, learning the culture this language is based on, and growing up in such a culture. The fact that AK Party, CHP and MHP fail to address this right in their proposals is a significant shortcoming.

All parties are in agreement that Turkish is the primary official language, and the primary language of science and culture.

REGULATIONS ON THE LIMITATION OF RIGHTS

A look at the criteria on limiting rights and freedoms as well as the criteria on exceptional cases on the sanctity of privacy and family life reveals that these criteria are dominated by clauses from the 1982 Constitution and the European Convention on Human Rights.

AK Party, CHP and MHP all use "national security" and "public order" as a fundamental restriction criterion. AK Party and MHP further add "public morality" to such criteria. CHP assumes a more progressive stance by excluding the "public morality" criterion. Whereas BDP leaves out "national security", "public order" and "public morality" criteria altogether. Restriction criteria employed by BDP are limited to the "preservation of public health" and "rights and freedoms of others", and "the existence of substantial suspicion" conditions. Such criteria are suggested by the rest of the parties as well.

In certain proposals, instead of "substantial suspicion of criminal activity", restrictions on "crime prevention" are included. In terms of limitations on the freedom to seek justice, BDP introduces three new criteria, namely "protection of minors", "protection of privacy", and "the rights and freedoms of those who are part and parcel in a legal case". In addition to adopting such criteria, AK Party uses "national security", "public morality" and "public order" criteria.

In terms of assembly and public demonstrations, AK Party and BDP refer to the criteria of "public order, public health", and "protecting the rights and freedoms of others". AK Party once again brings

forward “national security”, “public morality” and “crime prevention” criteria in this regard. Proposals by AK Party and CHP are one and the same. MHP is in favor of preserving the position adopted by the 82 Constitution (national security, public order, public health, public morality, protection of the rights and freedoms of others or crime prevention).

The introduction of restrictions to justify protecting the rights of others and preventing the promotion or the praise of violence and prevention of hatred and animosity among individuals within the confines of freedom of speech and expression is shared in proposals set forth by BDP and AK Party. In addition, AK Party uses “public order” and “public morality” criteria. While CHP shares the same proposal with AK Party and BDP in this regard, it also includes the “national security” criterion. On matters covering national security, MHP makes the same proposal as CHP.

Proposals laid on the table regarding the freedom of press are completely identical to those covering the freedom of speech and expression.

BDP does not include for any restriction criterion with regards to judicial control. AK Party introduces restrictive proposals for the stay of execution, and these proposals are the same as the restrictive criteria within the 82 Constitution, which is the criteria of “damages which are difficult to compensate”, and “the administrative act being clearly unlawful”. However, CHP does not bring forth a restriction criterion on judicial control; MHP follows suit in not placing any criterion on judicial control in their proposal.

THE EXECUTIVE

As for the President’s oath, AK Party and BDP have proposed a simplified oath text void of ethnic identity connotations by abstaining from the use of the expression “Turkish nation”. On the contrary, CHP and MHP have agreed on a proposal for an oath text that includes the phrase “Turkish nation”, and is almost identical with the oath in the 82 Constitution.

With regards to the duties and powers of the President, BDP, CHP and MHP have proposed restrictions and adjustments based on a parliamentary system, and have displayed an approach whereby the president’s status is more in line with the parliamentary system. CHP proposes that the president should not have any judicial powers. MHP, on the other hand, proposes additional powers such as the requirement for presidential approval on resolutions of supreme judges and prosecutorial boards, and the presidential announcement of supreme judicial member elections. However, all three parties have submitted proposals which would remove the powers of the president with regards to judiciary appointments.

Proposing a presidential system as the form of government, AK Party’s position is entirely different from the other three parties. The presidential system proposal of AK Party is one that preserves the current administrative structure, it essentially consists of adjustments in the relationship between the parliament and the president. Accordingly, the president’s connection to the parliament is severed; that is, the president is no longer a member of the parliament once elected as president. A condition preventing ministers from being members of the parliament is introduced. The president is vested with the power to issue a presidential decree. However, as per the hierarchy of norms, the decree is subordinate to laws.

The position of a deputy president is also brought forth in AK Party's proposal. The proposal suggests that in the case of a presidential vacancy before the term of office expires, until the term's end, the deputy president is entitled to exercise presidential powers by proxy. Another proposal by AK Party suggests that the Parliament may elect its own chair. However, the presidential elections and the parliament elections being held on the same day is in contradiction with the general principle stipulated in the presidential systems requiring these two entities to be elected separately and at different times.

As for the cabinet of ministers, it is noteworthy that BDP introduces the principle of gender equality with regards to ministerial appointments.

The first issue that is of significance in relation to the offices of commander-in-chief and the chief of general staff is that all parties are in an agreement about the chief of general staff reporting to the minister of national defense.

Additionally, CHP and MHP have adopted the system of the 82 Constitution. AK Party proposes that the commander in chief is to be represented by the president, and that the president is to be in charge of national defense. BDP however, suggests that the president should be commander in chief, and furthermore proposes that a commission be established within the parliament to oversee the government's national defense related activities and the Armed Forces.

MHP is in favor of the continued presence of the National Security Council, and AK Party, BDP and CHP are in favor of abolishing it altogether.

CENTRAL-LOCAL GOVERNMENT RELATIONS

In terms of the relationship between central and local administrative bodies, AK Party, CHP and MHP bring forward proposals that contemplate the preservation of "administrative tutelage". Furthermore, the proposal on the requirement to maintain the integral unity of administration while segregating administration into central and local entities is something that all three parties agree on. The concept of an integral unity of administration suggests a hierarchical administrative structuring and practice.

However, the three parties also bring about proposals to strengthen the local administrations. While CHP and MHP emphasize "decentralized government", they clarify that this must be interpreted as administration at the designated administrative location. AK Party proposes that local administrations should be allowed the power to deliver services that are both stipulated within the law and are not assigned to another administrative public body.

While BDP does not agree with the concept of the unity of administration, they prefer using the concept of autonomy in its stead. BDP also prefers "democratic decentralized government" over "administrative decentralized government". BDP proposes a layering of the local administration in the form of local public administration and regional public administration.

As for transparency, while CHP and MHP suggest transparency in administrative affairs, AK Party and BDP propose transparency for all administrative activities. AK Party and BDP also suggest for the prohibition of discriminative practices to constitute a criterion in administrative affairs. Moreover, AK Party and BDP bring forth a proposal so that administrative judicial

powers are never meant to be utilized as a yardstick for “suitability”. BDP and CHP suggest that the principle of gender equality should be taken into account in the formation of the administration.

FAIR REPRESENTATION

Since the fundamental problem with the issue of fair representation is the election threshold, suggestions brought forward in this matter should constitute its backbone. BDP suggests a total abolishment of the election threshold. AK Party and MHP have not brought forward any suggestions concerning the election threshold, indicating that they may have left the issue to the law. CHP proposes that the election threshold should not exceed 5 per cent.

As for the number of members of the parliament, all parties see it fit that this number should be 550. Moreover all parties have common proposals on electing 100 members of the parliament based on a nationwide election system. Only BDP proposes the election of 100 parliamentary members on a separate vote.

On the issue of presidential elections, CHP and MHP propose a return to the previous system where the parliament elects the president. BDP on the other hand suggests that the president be elected by public vote. Since AK Party proposes the presidential system, they naturally propose the president to be elected by the public.

All parties propose a minimum age of 18 for voting and being elected as well as for taking part in political activities. However, CHP is in favor of 21 and MHP is in favor of 25 as the minimum age for being elected as a representative.

As for fair representation, the proposal of BDP for a “public initiative” is an entirely new one. Accordingly, BDP brings forth a suggestion that a set number of voters (three hundred thousand) be able to introduce bills and propose changes within the constitution.

INDEPENDENCE AND IMPARTIALITY OF JUDICIARY

Principles

All parties bring forth proposals to determine a norm that clearly expresses the independence and impartiality of justice. The content of this proposal is worded to ensure that judges are independent and impartial while performing their duties. Moreover, a proposal is brought forth for the judges to make a judgment on the basis of personal conviction in accordance with constitutional provisions, law and jurisprudence. So far, all parties are in agreement on this matter. Additionally, BDP proposes that judges take into account supranational and international law as well as common law during judgment.

All parties are in agreement on the provision within the 82 Constitution, stipulating that no organ, authority, office or individual may issue orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, and make recommendations or suggestions. Only BDP makes additional proposals in relation to this provision. BDP’s proposals are on governing the activities of the investigation and inquiry commissions of the parliament as exceptions to this principle, and a proposal to ban the issuance of orders and instructions, expressed as the

“prevention of power and office being used to taint the independence and the impartiality of judicial functions”.

AK Party and BDP take constitutional provisions on judges and prosecutors as one. While AK Party is suggesting that judges and prosecutors should be reporting to the Ministry of Justice with respect to their administrative duties, BDP proposes that it should be just the prosecutors who do such reporting. As for CHP and MHP, they suggest that provisions on judges and prosecutors be handled separately due to their functional differences.

BDP and CHP suggest a constitutional rule that requires judges and prosecutors to remain within the rules of judicial ethics in the course of performing their respective duties. AK Party and MHP however have no suggestions to this end.

Judicial Administration

AK Party suggests that judicial administration be carried out by a structure in the capacity of High Council of Judges and Prosecutors (*Hakim ve Savcılar Yüksek Kurulu - HSYK*), while BDP suggests the same function be performed by a body to be called High Judicial Board. CHP and MHP propose separate boards for judges and prosecutors. MHP prefers that the Ministry of Justice act as a joint chairman for these boards, whereas CHP suggests severing all ties between the boards and the Ministry of Justice.

AK Party proposes that seven members of the board should be selected by TBMM from lawyers and members of faculty in schools of law, and social and political sciences in establishments of higher education; another seven members to be selected by the president from among judges and prosecutors; the remaining six members will be placed into two groups comprised of three practicing judges and three practicing prosecutors to be selected by the judges and prosecutors of lower courts.

CHP suggests that four members of the Board of Judges be selected by the Supreme Court of Appeals, with another three members to be selected by the State Council from among their respective chairs and members. The proposal includes that two members be selected from among those candidates who are faculty members in law schools and be nominated by the Intercollegiate Board, and two other members to be nominated by the Turkish Bar Association, with the selection process for all four members to be carried out by the TBMM. CHP also brings forth a suggestion that the selection of the Supreme Board of Prosecutors should be carried out by the Supreme Court of Appeals and the State Council.

MHP’s proposal in this regard suggests that three members of the Board of Judges be selected by the Supreme Court of Appeals, two such members be selected by the State Council, and one member be picked by the Turkish Bar Association General Assembly, with the remaining eight members to be selected by a drawing from among candidate bench judges. As for the Board of Prosecutors, two members of this board are suggested to be selected by the Supreme Court of Appeals, with a third member to be selected by the Turkish Bar Association, by way of drawing.

Within the proposal set forth by BDP in this regard, three members of the High Judicial Board should be selected by TBMM from members of faculty in schools of law, economics, and political sciences in establishments of higher education, another three members from among attorneys with a minimum

of ten years of professional experience. As per BDP's suggestion, five members shall be selected by the Supreme Court of Appeals, two members shall be selected by the State Council, with the remaining seven members to be selected from among judges and prosecutors by their peers.

The Right to Organize by Judges and Prosecutors

AK Party does not have any proposals in this regard. CHP, MHP, and BDP share the same content in their respective proposals on the right to organize by judges and prosecutors. Only BDP specifies the manner in which judges and prosecutors may organize by stipulating associations, foundations and unions as possible forms of organization.

Defense Institutions and Bar Associations

AK Party is in the view that no constitutional regulation is required in this matter. BDP, CHP, and MHP suggest regulations at a constitutional level. The common denominator of such regulations is that defense should constitute the foundation of the judicial system, that it should be independent, and that it should be represented by attorneys. Additionally, all three parties have indicated that individual bars and the Bar Association are bodies that should be included in the constitution.

Judicial Law Enforcement

Both CHP and BDP suggest the establishment of a body of judicial law enforcement. AK Party and MHP have no suggestions to this end.

The Right to Fair Trial and Special Empowered Courts

In the matter of the right to fair trial, BDP proposes an additional constitutional rule that defines equal access to justice by all as an obligation on behalf of the state. BDP makes an additional demand in the form of a prohibition in the constitution to convene special empowered courts.

Judicial Structure (Courts)

All parties are in favor of the existence of a Constitutional Court. There are however, differences of opinion on the number of court members and their selection. AK Party and CHP suggest 17 members, while MHP suggests 34, and BDP suggests 21 members for the Constitutional Court.

In a move that gives more weight to the Parliament in the selection of members, AK Party states that they prefer nine members to be selected by the parliament with eight members picked by the president. BDP suggests that of twenty one members, nine should be selected by the Parliament, four members by Supreme Court of Appeals, another four by the State Council, two members by the Court of Accounts with the remaining two members by the Bar chairs. CHP suggests that seven members should be selected by the TBMM, four members by the Supreme Court of Appeals, another four members by the State Council, one member by the Court of Accounts, and one member by the Supreme Board of Judges. As for MHP, they suggest that all members should be selected by way of drawing before the Parliamentary Constitutional Commission, of which seven will be members of the Constitutional Court, another seven will be members of the Supreme Court of Appeals, six will be members of the State Council, one will be a member of the Court of Accounts, four members will be senior public administrators, two will be attorneys, and one will be a certified public accountant, with the remaining six members to be selected from among

candidates with a law degree who have served as members of the parliament to be nominated by political parties with at least a ten per cent vote in the most recent general elections.

As for the powers of the Constitutional Court, all parties are in agreement that constitutional oversight should be limited by the law and the Parliament bylaws (from AK Party's standpoint, presidential decree in addition to these) in principle. All parties suggest a means for overseeing constitutional change in terms of form, only in addition to an inclusion that allows the right for individual filing (a complaint).

BDP makes an additional suggestion that the power to file a suit for annulment should be granted to the chairman of the regional execution board in addition to the president on the grounds that laws governing the duties and powers of the central and regional governing bodies are in violation of the constitution.

BDP proposes to increase the number of bodies to be granted the right to file for an annulment suit (e.g. all parties with at least a five per cent vote in the most recent elections, the Institution of Public Auditors, local administrations, Supreme Judicial Board, Supreme Court of Appeals, the State Council, Court of Accounts, bar associations, universities). In accordance with their regional government proposal, BDP also suggests that the Constitutional Court should be granted the power to resolve potential conflicts of power between the center and the regions.

Neither MHP nor CHP has brought any suggestions in connection with the Court of Accounts, or the authors of this paper may not have been privy to such information, if any. While AK Party's proposal contains similarities to the 82 Constitution, the proposal expands the scope of Court of Accounts' duties. Accordingly, the Court of Accounts will have the power to carry out the financial auditing of political parties. Public entities that are de facto commercial enterprises shall also be subject to the Court of Accounts oversight. Whereas BDP proposes that the Court of Accounts' reports are made available for public access to ensure transparency in such efforts. BDP also suggests that no public entity may classify information and documentation as confidential without the approval of the Court of Accounts.

Standards on Judicial Unity

One of the most diverse proposals in terms of judicial unity comes from AK Party in the form of consolidating the level of appeals in one body. Additionally, AK Party and BDP move in lockstep in the matter of abolishing military courts. AK Party and BDP suggest that only military disciplinary courts should remain in existence.

Since AK Party suggests a single body for appeals, they also propose the abolishment of the Court of Jurisdictional Conflicts.

CHP states that they are for the continued existence of the military judicial system as a separate body of jurisdiction. They do however propose a unity under the Supreme Court of Appeals' umbrella as a body of appeals. In this proposal, MHP and CHP share the same opinions. Both parties suggest the abolishment of the Military Supreme Court of Appeals.

MHP is in favor of the continued existence of a Military Administrative Court while suggesting the State Council as a body of appeals.

CONSTITUTIONAL BODIES WITH ADMINISTRATIVE CAPACITIES

Since this subject has not been discussed by the Constitutional Reconciliation Commission as of the date this report is prepared, we are limited in our assessment of this topic with respect to party proposals in this area.

Presidency of Religious Affairs

All parties with the exception of BDP allow for the existence of the Presidency of Religious Affairs (PRA) in the new constitution. However, the definition “with a purpose to uphold national solidarity and integrity” as it appears in Article 136 of the 82 Constitution is not used within the proposals by any of the parties.

PRA maintains its constitutional status as a “public legal entity” in AK Party’s proposal. AK Party prefers a “political impartiality” description over the principle of “secularism”, which is stated to have constituted the founding block of the PRA in the 82 Constitution. The proposal set forth by AK Party is not in the form of a reform concerning the position and scope of PRA, both of which are topics of frequent discussions within the realm of the constitution.

In line with the principle of “secularism”, CHP’s proposal on PRA emphasizes “carrying out tasks as stipulated within the law with a condition to guard the diversity of religions and sects within the society”. The definition of secularism has been preserved in its entirety, with an emphasis on pluralism within the said proposal. In this sense, it will be possible to call this a reformist approach.

MHP lays both “secularism” and “political impartiality” in their proposal concerning PRA. There is no pluralism message. In this sense, MHP’s stance is closer to AK Party’s proposal and the current situation.

Armed Forces (General Staff)

A consensus is established among all parties that the general staff should report to the Ministry of National Defense. Proposals by the respective parties reveal an underlying opinion where the commander in chief should be the president of the republic – or the president per AK Party’s proposal – who holds the highest state office.

The definition of security, as mentioned within the respective proposals for this particular article, is expressed as “homeland defense” by AK Party, “national–ulusal security” by CHP, “national–milli security” by MHP, and “defending the country” by BDP. All proposals, save for AK Party, make reference to an accountability towards TBMM.

Other Constitutional Bodies

Among constitutional bodies with an administrative capacity, RTÜK is excluded from a list of constitutional bodies by AK Party and BDP in their respective proposals. MHP and CHP suggest a detailed constitutional mechanism regarding the election of RTÜK members. Evidently, only CHP underlines “effective utilization of the freedom of press”, and “freedom to form public opinion”, in connection with the duties and powers of RTÜK, within their proposal.

While institutions that are public entities in essence are not included in the proposals brought forth by AK Party, such institutions appear in detail in the proposals of other parties.

While *regulatory and oversight institutions*, and administrative oversight institutions are not included in the proposals brought forth by AKP, MHP and BDP, they are included in CHP's proposal.

No party, with the exception of MHP, mentions *Atatürk Council for Culture, Language and History* in their respective proposals. By referring to Atatürk's heritage, MHP prescribes maintaining this body as a constitutional institution in its current status.

SOCIAL JUSTICE

AK Party presents "public order", while MHP upholds "national security", "public order", "crime prevention" and "the protection of rights and freedoms of others" and BDP claims "the protection of rights and freedoms of others" for justifying the introduction of limits on union rights. CHP brings forth no limiting reasons to this end. Going one step further, CHP suggests that the extent of union rights for members of security forces and Armed forces be regulated by law.

Per AK Party's proposal, workers should have the right to strike in the case of a dispute during the execution and implementation of collective bargaining. CHP includes a requirement for the right to take collective action and the right to strike. While CHP seems closer to proposals submitted by MHP and BDP, they exclude a "dispute" criterion for the right to strike.

In MHP's proposal, the right to strike for employees is prescribed in the case of a dispute during the execution and implementation of collective bargaining between the employer and employee.

BDP's proposal contains the right to strike for the purpose of maintaining and improving the employee's economic and social status, exercise their rights and improve such rights in the course of their relationship with their employers.

All parties with the exception of BDP concur on the following text with regards to "the boundaries of the state's social and economic duties": "States fulfill their constitutional duties in social and economic fields by keeping an eye on priorities that are in line with the objectives of such duties to the extent of adequate financial resources. Rights on health, social security, and job security are not subjected to the adequacy of financial resources referred to in paragraph one. The duties of the state with regards to such rights shall not be considered fulfilled unless minimum assurances are provided". The fact that health, social security and job security issues are not bound by the "adequacy" criterion may be interpreted as a new and reformist step if full agreement can be achieved on this proposal. BDP is of the opinion that this article should not be rehashed.

FREEDOM OF RELIGION, CONSCIENCE AND FAITH

Phrases used by AK Party and BDP to describe freedom of religion, conscience, and faith are one and the same: "This right covers, among others, the freedom of practicing one's religion and faith, declaration and spreading such religion and faith by worshipping privately or in a public place on their own or collectively, by engaging in educational and training activities, practices and ceremonies, and by organizing."

AK Party and BDP agree on the expression, "No individual may be forced to take part in worshipping, religious practices and ceremonies, disclose their religious beliefs and opinions, or be barred from such activities, practices, and statements; may not be reprimanded, accused or may not be treated differently for their religious beliefs, thoughts, and opinions, and fulfilling or not

fulfilling the requirements of their respective faith”. Additionally, AK Party and BDP have clarified and proposed a more detailed description of the rights set forth in Article 24 of the 1982 Constitution.

“Education” (which refers to formal education provided in a public institution for CHP) and “learning” (which refers to education provided by the family for CHP) as used by AK Party and BDP in their descriptions do not appear in CHP’s description. CHP’s proposal may be considered a reformist step as it emphasizes the expressions of respect for the impartiality of the state and for social pluralism. However, in a contradictory manner, CHP blocks the way to pluralism by suggesting that training and education on religion should be carried out under the supervision and oversight of the state. In addition, BDP aims to reflect demands by minority groups in the constitutional draft by proposing that “the state is obligated to maintain a fair allocation in using public resources for the purpose of providing religious services, and provisions on positive discrimination are applicable in favor of groups of different faith who are not in a favorable position”. There are however, no other proposals by other political parties supporting such an approach by BDP at this time.

On the restrictions to this right, BDP only brings forth the restriction of “protection of rights and freedoms of others”. On the rights related to freedom of religion, conscience, and faith with the expression “violating the purposes of public order, public health, and the protection of rights and freedoms of others”, the proposal by CHP introduces restrictions that are vague and quite open to interpretation. The expression “abusing and exploiting religion” in the current Constitution, which can potentially be used for ideological purposes by the judicial system, constitutes the continuation of CHP’s proposal. Like CHP, MHP also presents public morality, public health, and the protection of the rights and freedoms of others as their justification for restriction. While proposals by MHP and CHP share a common direction, it can be said that the two proposals are products of separate dynamics. The ideological conflict between AK Party and CHP becomes clearly visible in the drafting of relevant proposals on this issue.

As in the 1982 Constitution, under the article covering freedom of religion, conscience, and faith, AK Party and MHP propose a compulsory course on religious culture and ethics. CHP contradicts AK Party’s proposal by proposing that the religious culture and ethics course be an elective. This proposal by CHP constitutes a greater response to societal needs and demands. Although no definitions are provided on the contents of the course, proposals by AK Party and MHP maintain the current constitutional status.

Under the light of the widespread demands of individuals and communities of different faiths in Turkey, and particularly the relevant verdicts of the European Court of Human Rights, it cannot be said that the article is addressing social needs. There are no provisions in the proposals of AK Party and MHP on either the compulsory course or such contents thereof. BDP does not allow for religious culture and ethics courses as a constitutional provision in its proposal, that is, they are of the opinion that this matter is not a constitutional issue.

PROPOSALS ON ADDITIONAL ARTICLES

BDP has submitted proposals for additional articles governing “the right to peace”, “the right to truth”, “women’s rights”, “the right to cultural identity”, and “the right to conscientious objection” to be included in the new constitution. CHP made a proposal for the “right to live in peace, and in an unarmed society”.

II. Assessment of Proposals by Political Parties on a New Constitution

Mehmet Uçum, Özge Genç

In the previous section, we reviewed party proposals while abstaining from over interpretation. In this section, we will evaluate the proposals from the standpoint of a participatory and deliberative democracy that is built upon the individual.

During the evaluation of the proposals by political parties, our frame of reference was a set of principle criteria that a new constitution which will shape the future of the society in Turkey should inevitably base itself on. The criterias are as follows:

- **A democracy that allows individual participation and oversight;** the presence of participatory system mechanisms where fair representation is provided but not solely based on voting.
- **The principle of pluralism** allowing for the representation and participation of all identities to be embedded in the essence of each article and in the spirit of the constitution.
- **Sovereignty belonging to the individual and society;** the role of drafting a new constitution and building a political system belonging to the individual and society at all times; having stable mechanisms ensuring that sovereignty belongs to the individual and society as opposed to constitutional institutions; separation of power being described as functions of the sovereignty of the individual and society, and accordingly, building a relationship of non-intervention, independence, balance and oversight among the functions of sovereignty.
- **A democracy that is based on social justice;** full liability requiring the state to fulfill its duties and obligations towards the individual on matters of right to social security, income security, freedom of association, and protection of under privileged groups, not “to the extent allowed by its means”, but rather at all times.
- **The right to participation in judicial process and the right to access justice;** judicial decisions being made in a just, effective, and expedient manner; the individuals and the representatives of the society being included in the investigation and legal proceedings stages; the rights of the individuals and the representatives of the society to object to judicial decisions of general effect; practices allowing those outside the profession to become judges, and the creation of extensive representative mechanisms under the administration of the judicial system.

For the purpose of a general evaluation, most of the constitutional proposals by the political parties fall short of the mark in terms of the criteria listed above. For the purpose of a general evaluation, aside from whether or not such criteria are taken as a reference, the parties seem to suffice with proposals that partially deal with problems in the current practice. Almost none of them are able to present an approach that will potentially grasp and cover situations that could be faced in the future. It is noteworthy that the proposals, which will be reflected in the new

constitutional draft, are seeking solutions for current problems rather than building a future for the people. Furthermore, it is also striking that proposals with intent to deal with the past are brought forth by very few parties, and an emphasis on the future does not exist in almost any of the proposals by the parties.

On the eve of drafting this new constitution Turkey stands before a rather favorable fork in the road. It is a game-changing opportunity to create a text that will, not only resolve past and current issues, but also be in line with the future fabric of the political system. What will endow the new constitution with “newness” hinges upon whether or not it will be “addressing the future”.

In this regard, rather than establishing the past/current political system and positive law as points of reference, the new constitution should be one that aims to fulfill the needs of society, and contains the requirements of a new political system needed by an internet society and information technology.

The current efforts are unfortunately unable to lay the groundwork for these ideals. We clearly see a continuation of the traditional constitutionalism within the proposals of the parties. Traditional constitutionalism in Turkey simply meant crafting a constitution that is “non-civilian”. Before work was underway for a new constitution, the need for a civilian constitution formed a foundation for the call for a new constitution. As it can be understood from the proposals, under today’s conditions and in its current form, the constitution drafted by the parliament is neither “new” nor a “civilian” constitution. A civilian constitution does not mean simply drafting one where the military is not included, but rather drafting one that enables the establishment of a political system that is based on the individual, is pluralistic, and deliberative in terms of its structure and content. In this sense, even though different arrangements have been adopted, it must be noted that each and every detail that is and has been featured in current and past constitutions is preserved in the proposals.

Avoidance, especially on behalf of AK Party and BDP, to make certain issues that should be regulated by law a constitutional matter may be viewed as a positive step. It is evident that BDP’s proposal contains issues that are not laid on the table by traditional Turkish constitutionalism (the right to peace, the right to truth, the right to mother tongue, public initiative, etc.).

The efforts for a new constitution, on which preparations continue by the Commission, where the contributions by individuals, the society and social groups are included, and where all political parties in the Parliament are represented with an equal number of members is nothing short of a reform in itself. However, taking new steps towards the preparation of a new constitution that will be shaping the future of Turkey is also paramount. By keeping the ever changing social and political needs of Turkey in mind, parties may renew and update their respective proposals as necessary. Mechanisms of public discussion may be activated by sharing the proposals of the political parties with the public in a transparent manner.

With the intent to make a constructive and positive contribution to the process, the evaluation and assessment of the titles discussed in the previous section summarizing the political party proposals is presented below for the reader’s consideration.

CITIZENSHIP

With the attitude adopted by CHP and MHP, it does not seem possible to reach a citizenship arrangement that will allow a solution for the Kurdish issue in Turkey. The issue of citizenship and how citizenship will be defined, one of the most important legislative aspects of the constitutional draft laying the groundwork for peace within society, is of extreme importance. In the form of a citizenship standard that does not emphasize/connote Turkishness or any other ethnic identity, proposals set forth by AK Party and BDP seem sufficient within the confines of today's conditions.

If the constitution features a preamble, it is crucial that this section contains a citizenship definition that echoes different opinions while not allowing for an emphasis/connotation of ethnic identity. If CHP and MHP resists in this regard, we can easily say that other approaches within the constitution will be of little to no value. An emphasis of pluralism on behalf of CHP, reflected in some of the proposals by the party (such as the Presidency of Religious Affairs), is sure to contradict with a constitutional preamble that makes reference to ethnic identity. For all different religious, linguistic, and ethnic identity bases to appear on a level field, CHP and MHP need to adopt a different point of view, and such a perspective may only be attained through a novel citizenship definition.

The proposals, in line with the classical approach, propose a citizenship formula where every individual with legal ties to the Turkish Republic is a citizen of the Turkish Republic. Citizenship is thus structured over the relationship between the state and the individual. However, approaching the topic through a new perspective, citizenship can be defined not only through an emphasis on the legal ties between the state and the individual, but also based on the individual's relationship with the country and society they live in. This is something that can only be laid on the table by taking current developments into consideration. Because in a setting where moving to a new homeland, and calling a new place home has become a common right for every individual, selection of a place as a homeland, and a society as a culture vessel to live in should prove sufficient to earn the right for citizenship and establish citizenship ties. In this regard, new content and new set of criteria may be required for citizenship. If we are indeed dealing with the constitution of Turkey's future, defining citizenship merely in terms of a relationship with the political system will prove insufficient.

EQUALITY

One of the fundamental problems with equality is the inadequacy displayed by all parties in their approach to "de facto equality" while moving in lockstep in standard rules in terms of "de jure equality". De jure equality, expressed as "everyone being equal before the law", and "same rules applying for those sharing the same condition" forms a common denominator across all parties. BDP and CHP are a step ahead of AK Party and MHP from a de jure equality perspective by basing their stance on the criteria of sexual orientation and sexual identity. Furthermore, by including the criterion of ethnic identity and race, BDP and CHP are ahead of other parties.

No parties have a clear approach on de facto equality in the context of philosophy of law. For instance, although provisions exist on political systems based on equal participation and

administrative bodies, proposals by the political parties do not offer any views on compensatory rights, privilege rights (positive discrimination), and protection rights to enable de facto equality. There is however such a need to address the requirements of individuals who are in a position of disadvantage and identities that are oppressed and alienated by the dominant culture in one form or another.

Compensatory rights are those that must be established for the purpose of remedying the disadvantages suffered by groups due to unfair practices in the past, such as those with different languages, religious beliefs and ethnic identities, who have been alienated by a mono-cultural nation-state approach. Protective rights are rights that may be determined based on the status of certain groups. For instance, rights to protect the tenants from landlords, consumers from manufacturers and merchants, employees from employers, children from adults, the physically and mentally impaired from those who are not, and protecting the elderly are some examples of protective rights. Positive discrimination means rights of privilege providing additional means to certain groups, despite the fact that they are subject to identical conditions. For instance, in an NGO where 80 per cent of the members are females, granting a 50 per cent representation right to male employees in management may be regarded as positive discrimination.

No approaches have been adopted by political parties in their proposals on such rights for ensuring de facto equality.

RIGHT TO LIFE IN ONE'S MOTHER TONGUE

We could cumulatively qualify all rights as the right to life in one's mother tongue, such as the rights by an individual to learn the language used in the setting they are born into, establish a relationship through this language with the circles and the culture the language is used in, grow up and develop in this culture, and be able to use this language in social and professional life; in short, to live a life based on this language and the culture that is built on this language in the course of developing the physical and spiritual self. However, in Turkey, the fact that this issue of living one's life using the mother tongue is reduced to merely a right to education, access to public services, and the right to defend one's self limits the entire matter by removing it from the scope of such a general framework. It is for this reason that the ongoing argument on specific fields such as education, legal defense, and public services turns into an argument over rights that should be recognized as "based on the extent of means", or one that emerges as a symbol of political conflict.

The right to life in one's mother tongue is earned at birth and cannot be subjected to limitations. While a multitude of subheadings may exist in this right in the form of education to legal defense, and access to public services, it is imperative that this right must be included in the constitution as a whole. The right to life in one's mother tongue has evolved into an indisputable right in today's world where social diversity and global mobility is on the rise. In today's globalized world, it is impossible to impose limitations on the ethnic diversity of communities and the right to life in one's mother tongue. Taken into consideration from such a perspective, the right to life in one's mother tongue must be included in the constitution as a fundamental principle, in a manner that will be able to address future needs and demands. None of the proposals save for that of BDP on the implementation of the right to use the mother tongue seem to be able to address this demand.

REGULATIONS ON THE LIMITATION OF RIGHTS

The use of concepts whose content may be determined by oversight bodies during the establishment of the criteria on limiting rights and freedoms, may lead to decisions that are unable to be impartial. The content of the concepts provide a perpetual frame of reference for limitation clauses such as national security, public order, and public safety included in constitutional process. Therefore, the manner in which the content of the concepts is determined is critical. While these concepts do not amount to much on their own, they take on meaning depending on the characteristics of the political system they exist in. Engaging in an argument on these concepts before a political system regulated by the constitution is formed, and before a system of rights and freedoms developed by this constitution is set up, makes no sense at all. If it is a more liberal and a more pluralistic political system that is the subject of discussion, actions taken towards the disruption of such a liberal, pluralistic and democratic political system may in fact mean a violation of the public order. Building national security on the foundation of a political system based on a singular ethnic identity will render the concept of national security a limitation on rights and freedoms. However, building national security upon a multi-identity approach may mean that a violation of this approach also means a violation of national security and subsequently, a limitation may be imposed.

General ethics values as a limitation clause should be avoided at all costs. The concept of generalized ethics values is the clause that lends itself to a subjective definition the most. However, because providing health standards is among the most significant rights of the individual and society, the establishment of general health conditions may be allowed in the constitution as a limitation clause.

Rather than what these restrictions are, the characteristics of the political system the constitution will be establishing which define these features carry far greater weight.

THE EXECUTIVE

The main issue revolving around the questions of the executive is proposals on the forms of government. The thesis proclaiming sovereignty is vested in the nation is a universally accepted one, however, the discussion of exactly how this principle will cease its existence as a tired assumption, and what it will correspond to within the political system constitutes the most important issue within this topic. It is not possible to claim that proposals brought forward by the parties on the forms of government are based on this principle.

If it is indeed the people who constitute the primary foundation of sovereignty, and if the right to sovereignty is defined as “national sovereignty” within the law, there is an absolute need to review the definition of “nation” at this point. If what is meant by the definition of a nation is one that includes all identities, and if we are talking about a transition from an approach based on a Turkish ethnic identity into an approach based on plurality, a discussion needs to be initiated on how the sovereignty of such a pluralistic nation will be actualized. A look at the proposals by political parties in this regard reveals that the parties stay clear of this discussion entirely, and their proposals on the forms of government are merely geared towards putting out current fires, and taking the easy way out. Rather than a discussion on how this sovereignty shall be rendered

functional in a manner that maintains its ties to its original roots, another look at the whole lot of proposals covering legislation, execution and the judicial system unearths a discussion on sovereignty the parties base on their respective priorities and one that avoids real issues. From this standpoint, the presidential system discussion by AK Party is based on a vision of an agile effective state practice. In a similar fashion, suggestions on behalf of BDP, CHP and MHP, all prescribing a form of government within a parliamentary system, do not seem conducive to create an effective discussion platform in the matter of national sovereignty. A more prevailing concern throughout those parties that categorically reject the proposal on a presidential system is that such an approach by AK Party will lead to a totalitarian regime.

The underlying fundamental issue surrounding this topic is not that the AK Party is laying a technical proposal on the table that addresses its own concrete needs as a political party in a position of power but that the parties opposing the presidential proposal are not bringing forth a different suggestion that will improve the parliamentary system. If the discussion is carried out based on the source of sovereignty and the way it is actualized within the political system, totalitarian threats within AK Party's proposals will become evident. Proposals suggesting that the parliament be the highest body of decision should be brought forward in a far more substantial manner in the form of a democratic and pluralistic system that is based on the individual. At this point, proposals geared towards reinforcing the parliamentary system and allowing it to transform into one that facilitates day to day political practices may be brought forward. Otherwise, in light of the parliamentary system's past experiences that were inefficient coupled with the social support AK Party enjoys, AK Party's proposal will maintain the favorable edge.

Without reinforcing the community's participation mechanisms in the decision making processes, and increasing the community's role in overseeing the execution processes of such decisions and their outcomes as a continuation of such a participation, when a proposal is brought forward to merely revise the existing parliamentary system or bring about a more effective way of governing, the whole point on the essence of the discussion is missed altogether. Within the confines of the ongoing public discussion on a presidential system vs. parliamentary system, the discussion itself is essentially limited to the topic of a political system that has been severed from the very source of sovereignty.

CENTRAL-LOCAL GOVERNMENT RELATIONS

No progressive proposals are observed in the matter of the community's right to participate in the decision making processes through local administrations in the area of central and local administration relations. Even proposals on local governments by BDP, the most progressive party among those bringing forth suggestions in this matter, are in fact based on regional centralism and one that carries the risk of recreation of the center in the regions.

In this regard, the general approach assumed by the parties also contradicts the European Charter of Local Self-Government, which allows for a comparative assessment in discussions on this topic.

Conversely, the matter at hand in this case is the handing out of the center's powers to local administrations, and the creation of a decision mechanism that starts from neighborhood councils and moves to the center.

As it becomes evident in the proposals within the context of this particular topic, never a part of the oversight process, the individual and society always remain as the governed and directed in administrative processes. It can be seen that, with the exception of those submitted by BDP in part, the relationship between the state and the individual is based on the notion that the state governs and directs the individual and society.

With the exception of the “democratic decentralized government” concept by BDP, one that can be called a reform in itself, no new political approach that would stand apart from the old/current political system was unearthed among proposals.

FAIR REPRESENTATION

Stability in administration and fair representation are among the most adopted principles of political science. Election threshold, developed for the sake of stability in administration falls quite short of its mark in the manner it is implemented in Turkey. Political scientists argue that the election threshold should be limited to 3 or 4 per cent to ensure administrative stability. Inclusion of this principle through a certain level of mutual agreement does not exist within the proposals.

The implementation of “Parliamentary Membership of Turkey” that will, in one form or another, allow the representation of those parties which are not able to go over the election threshold, and the fact that an accord has been reached in this matter is important. Regardless of the election threshold, it is imperative that a system is introduced to allow the representation of all parties with a minimum of 1 per cent or more of the votes across Turkey in the Parliament. From this perspective, BDP’s proposal on a separate vote for Parliamentary Membership of Turkey is indeed fitting.

Concurring on the age of 18 to be eligible to vote, the parties may be advised to lower such eligibility to an age of 16, in line with current developments and in a manner that will manifest itself as establishing the political system of tomorrow. In today’s conditions where access to information has become easier and technology has infused itself in all stages of life, the mental development of an individual is much faster and individuals come of age much sooner. In this context, an individual reaches the level of volition and proficiency to vote much sooner than in the past.

“People’s right to recall a member of the Parliament” and similar innovative proposals should also be discussed within the confines of fair representation. Inclusion of such clauses within the constitution even though they may never be used will allow individuals to take part in oversight of the political system and legislative processes, and this in turn will further strengthen fair representation.

Yet another similar proposal in this regard may be the inclusion of a fundamental article within the new constitution covering the opening of the Commission sessions in the parliament to the public. Additionally, to eliminate the obstacles within the bylaws, a fundamental standard that allows participation not just through organizations, but on an individual basis, may be included in the constitution. Each citizen, or anyone living in Turkey regardless of citizenship condition, may be given the right to take part in commission activities and state their opinion on matters that concern them; in a manner that is beyond submitting a petition for that purpose.

In this sense, it may prove beneficial to include a definition of “the right to take part in legislative practices” in the new constitution.

INDEPENDENCE AND IMPARTIALITY OF JUSTICE

The entire lot of proposals on this subject creates the impression that no thought has been given to structuring the administration of the judicial system in a manner that is open to individual and public participation.

Nevertheless, it could have been considered that the relationship between the individual and the political system is in a stage of transformation, from a sacred state approach to one in which the state serves and makes life easier.

To this end, innovative approaches such as a meticulous definition of the right to access justice, the prospect of inclusion of lay prosecutors, increased representation in judicial administration, and utilization of solutions outside the realm of the judicial system may be laid on the table and should be stressed further.

CONSTITUTIONAL BODIES WITH ADMINISTRATIVE CAPACITIES

Presidency of Religious Affairs

A look at the discussions held on the Presidency of Religious Affairs (PRA) in Turkey reveals a range of diverse reform and restructuring proposals in connection with the PRA by large segments of the society. In line with such discussions, not including the PRA, in its current institutional structure, in the constitution or restructuring the PRA through a pluralistic approach and transforming it into an administrative organization that address all faiths will indeed be a reform. In other words, the PRA should be an administrative organization that ensures that the state assumes a position that maintains an equals distance / impartial stance before all faiths. A new secularism definition which will establish the basic principles of how the state will position itself before belief systems constitutes the determining factor in the structuring of this institute.

In this regard, proposals by CHP and BDP may be taken into consideration due to their respective “reformist” approaches. On the other hand, CHP’s reference to “secularism” in the same article may only be meaningful if a definition of such secularism is based on pluralism, impartiality or maintaining an equal distance. AK Party’s references to political impartiality instead of secularism results from a reaction to an understanding of secularism that allows provisions of services to the extent made possible by an official secularism concept, one that is deemed interventionist within AK Party circles. If the topic at hand is a pluralistic secularism approach, arguing for the inclusion of the PRA in the current Constitution will not make sense. Proposals regarding PRA should therefore be reviewed in order to eliminate such an inconsistency.

Armed Forces (General Staff)

The fact that all parties propose that the general staff should report to the Ministry of National Defense is a step in the right direction. It is important to support such a step through devices designed to completely eliminate the military’s role in political processes. In this regard, the elimination of the National Security Council – a common denominator in the proposals of all parties with the exception of MHP – is an important step towards the elimination of the military’s role in domestic politics.

Other Constitutional Bodies (RTÜK, Institutions that are Public Entities in Essence, Regulatory and Oversight Institutions, Administrative Oversight Institutions, and Ombudsman)

It is not essential for all the above listed bodies to be included in the constitution. Such bodies have an obligation to fall in line with the changing social dynamics and demand per their nature. The way these bodies are structured, their power, functions, membership structure and services should be handled in a more dynamic legal framework in the course of Turkey's democratic institutionalization.

Organizing independent bodies of administrative oversight and regulation as the sole components of administration misses the point; structural components should be established to allow the representation of the people in such bodies, and mechanisms should be put in place to ensure public oversight of the practices of such bodies.

Bodies that are public institutions and professional organizations should be excluded from the constitution and compulsory membership should be eliminated. Independent organization by such professional groups, within the confines of a multitude of alternatives and freedom of choice, will prove to be a more conducive approach to today's conditions.

SOCIAL JUSTICE

The concept of social justice is not limited to rights such as minimum wage, the right to rest and leisure, the right to organize, and the right to social security. An individual's right to have assurances for a minimum income regardless of their employment status has evolved into one of the most important principles of social justice. The fact that an approach in line with such concepts within party proposals does not exist constitutes a serious defect.

Having the right to social security as a complimentary factor to income assurance, again, in a manner that is independent of one's employment status, is another important principle.

While such approach adopted by the parties may seem sufficient within the realm of classical social justice principles, it could be argued that this approach falls short of emerging necessities in this age.

FREEDOM OF RELIGION, CONSCIENCE AND FAITH

Proposals on this topic have been formed in tune with the respective positions favored by each political party. However, these principles should be included as constitutional standards in concert with international treaties.

Freedom of religion, conscience and faith should be discussed once again by parties to distill the issue through fundamental principles such as an individual's right to fully express themselves in public areas, the obligation on the state's part to remain impartial, or maintain equal distance to various religious and faith choices, and the state's responsibility to be under equal obligation to different religious and faith preferences.

It should also be taken into consideration that the expectations surrounding religious culture classes where such courses are of a nature that offers alternatives in line with various religious

beliefs and faiths within society and presents a freedom of choice rather than a compulsory item within the curriculum is one that corresponds to social requirements.

THE QUALITY AND CHARACTERISTICS OF THE STATE

Since this topic has not been brought up for discussion as of yet, we do not have any information on the proposals by political parties. Such a discussion will determine the proposals stated above.

BDP AND CHP'S ADDITIONAL ARTICLES

BDP has submitted proposals for additional articles governing “the right to peace”, “the right to truth”, “women’s rights”, “the right to cultural identity”, and “the right to conscientious objection” to be included in the new constitution. CHP made a proposal for the “right to live in peace, and in an unarmed society”. It is significant that these proposals are more progressive compared to the classical constitutionalism approach.

III. WHO SHOULD AK PARTY COLLABORATE WITH IN DRAFTING THE CONSTITUTION?

Etyen Mahçupyan

The constitution drafting process may be regarded as a coming of age effort on the part of present-day Turkey. Considering that they have not once drafted their own constitution, have consented to the mentality of those holding the reigns, and that their very national identity had been provided by the state until now, how prepared can a people be to draft a social contract that will reflect their own volition? One must also add the permanency concerns, worries regarding the loss of identity, and the concern of being deprived of the assurance of tutelage... And from a psychological perspective, it can be seen that it is quite unlikely for society in Turkey to have the necessary level of maturity required to draft a constitution. Moreover, such a period of reflection happens to coincide with the globalization dynamics of worn out nation-state norms; we therefore find ourselves living in a setting where uncertainty and mistrust are further elevated. This is indeed the reason why the European Union (EU) has functioned as an anchor, and why this is perceived from Turkey's perspective as the test of permanency in the new world. Such a backdrop implies that a country like Turkey can only become respectable and democratic by rubbing elbows with the EU and adopting their norms, and that Turkey can only draft a functional and real constitution this way.

However, with several unexpected overlapping developments, the past decade brought about a very different political setting and a state of mind. The economic crisis that affected Europe, coupled with social trauma brought about by Muslim migration to the West resulted in EU distancing from Turkey. With consecutive election victories, a grassroots party with Islamic sensitivities carved its name in the political heart of the country, and set out to transform the main pillars of the Kemalist regime in line with the spirit of the times. Although the objective of EU accession does continue, benefiting from the potentials unearthed by the global world is crystallized as the primary objective. Administrative and legal basis of tutelage were gradually filed away in the course of that very process. All these developments reversed the trust dynamics: Now, while EU means uncertainty, the global setting presents new opportunities and assurances.

In the end, there is an inclination towards becoming a society that has the courage to face itself once again, that bolstered its self-confidence, and is getting ready to face the diversity within itself. This mindset in which the constitution is being drafted is radically different from previous constitution drafting processes. The question in the past was 'what are we'... Now the question is 'what is going to become of us' and this question does not solely express concern. This is because there is a search for standards and norms across the whole of society. In other words, the question that is indeed being asked is, 'what do we want to become', with all other questions and concerns remaining under its shadow.

The constitution that will be drafted will need to "re-establish" not only the state, but also the society, that is, it will have to "recognize" it the way it is. Therefore, what we are after is a new state/society relationship. It is quite clear that the first and foremost upholder of the mission will and needs to be AKP. It cannot be thought for any political actor to undertake such an endeavor on behalf of the society without the backing of social legitimacy. The question therefore is, which party or parties AKP will be collaborating with in such an effort, which political party it will take along, or find alongside them in the course of this endeavor.

When the parties with groups in the parliament are analyzed from a political/cultural perspective, it can be seen that they are in an almost template-like pattern of divergence. Starting from a point of assumption where qualities

attributing the respective identities of the political parties are associated with 1) the cultural resources they are based on, and 2) the political standards they have identified themselves with, and further assume that one goes between traditionalist/modernist extremes, while the second party swings between pro-status quo/reformist extremes, we could position the parties as follows: AKP as traditionalist and reformist, CHP as modernist and pro-status quo, MHP as traditionalist and pro-status quo, and BDP as modernist and reformist...

Such a positioning suggests that CHP is the party most distant to AKP. Not only is there a lack of compatibility between the two in terms of cultural bases or political targets, but there is a clear disparity. However, CHP is the founding component of the state, and if the regime transition that is taking place now is to be experienced not as a fracture but rather in continuity, it has to be acknowledged that the legitimacy of the new constitution requires collaboration with CHP. Such cooperation is also extremely favorable for drafting a permanent constitution. However, it is also quite evident that the final product shall suffice with a temporary improvement that perpetuates the previous system for the most part. Given the process Turkey is going through, the question is how meaningful such a solution is ... And the answer must be: If the future does not present a radically favorable or unfavorable opportunity or a possibility, a constitution based on collaboration between AKP and CHP would make sense. In other words, if the future will not be much different from today, and if it is impossible to construct a different future, then a constitution ensuring a smooth transition that will not make any waves could be a rational alternative.

However, this is not the case... By taking the tutelage head on and through steps of reform taken in the judicial system, Turkey has just managed to come within inches of an alternative it had given up dreaming about: the Kurdish issue can be resolved, meaning the arms may be laid down, and the road to a political solution can be paved. Adverse possibilities implied by the uncertainty of the future are diminished with the dominance of politics over the state, and the increase of Turkey's influence in the neighboring geographical region. Correspondingly, a gradually strengthening relationship between especially Iraqi Kurdistan and Turkey is the harbinger of a positive opportunity that had not been previously foreseen.

Therefore, in the current conjuncture, a constitution which brings about a temporary improvement while essentially perpetuating the status quo can neither be a solution for Turkey, nor be a platform for making the best of Turkey's potentials. It must also be added that even under the current situation, AKP's first choice would be an 'innovative CHP'. However, the problem is the fact that CHP has failed to become 'innovative'... Out of the two remaining possibilities, collaboration with MHP implies a Turkey where fear and concerns prevail, whereas collaboration with BDP suggests one with hope and courage.

These general observations have increased the probability of a constitutional draft in the upcoming period as a product of AKP/BDP. This is because it is now paramount for the new constitution to inevitably have a reformist character. However, to test drive the issue in real life conditions, it would be useful to compile and compare the proposals submitted by the parties to the Constitutional Reconciliation Commission. One warning must be noted before all: The majority of these proposals were presented without realizing the fact that steps are being taken towards the solution of the Kurdish issue. They can therefore be revised at this time, and AKP in particular can come up with different formulations.

When reviewing the contents of the constitution articles proposed by political parties, the articles that all parties agree on can be set aside as a start, as these articles are not in a position to possibly impact probable political collaboration. It is quite evident that none of the four parties have brought forth a reformist alternative in the area of

limiting the freedom to seek one's rights, however they concur in the form of a reformist position in the way they define equality, children's rights, freedom of religion and conscience, and on the issue of the Joint Chiefs of Staff reporting to the Ministry of Defense.

Examining the differences between the proposals by the parties, the first observation is the fact that neither AKP nor MHP is more reformist in comparison to BDP in any of the topics. As for a comparison between BDP and CHP, it can be seen that while CHP acts more reformist in a single article (the impartiality and independence of courts) BDP emerges as more reformist in at least eleven articles they have brought forward. In this context, a critical question would be one on what reform proposals BDP is left alone while the other three parties concur on the status quo. This is because such areas may indicate a structural resistance that will create problems in the future. We can list such areas as follows: Freedom of speech, freedom of the press, governance relations between the center and the local bodies, and special empowered courts. As far as the democratization of Turkey is concerned, it is obvious that these issues are of vital importance, and if a reformist stance cannot be adopted in these regards, the "solution" of the Kurdish issue may remain as a mere "dream".

A second critical observation is on the articles on which parties other than AKP agree on, and where AKP, the ruling party, is left alone... This is because, these areas imply the possibility of a severe tension between the ruling party and the opposition, and this tension is gradually expanding to a social scale. There are three such articles: limitation of judicial control, impartiality and independence of the courts, and an assurance of organization for judges and prosecutors... It is clearly seen that the real political "battle" of the coming term will be over the relation between the executive and judicial system. This is indeed the actual reason why a presidential system is being proposed by AKP.

As for the third step, it would be useful to see which parties AKP is in agreement with and in what areas. A realistic collaboration implies both a certain common stance from a reform perspective and an accord that would not be out of place from a cultural standpoint. The following articles reflect a common stance between AKP and CHP: Freedom of speech, freedom of the press, limitations on these two freedoms, governance relations between the center and the local bodies, National Security Council, and special empowered courts. However, meeting at a reformist common ground emerges only on the matter of limiting the freedom of speech and the freedom of press, as well as the structuring of the National Security Council. Common stance taken by AKP and MHP on the other hand, makes very explicit references to cultural codes: Other than defining freedom of speech and freedom of the press, both parties propose similar limitations in all areas of freedom such as the right to privacy, freedom of information, right to work and contract, freedom of association, and freedom of assembly and right to protest. While the traditionalist background helps ensure that these two parties meet at a conservative common ground, it also emerges as a barrier before a reformist approach. As for the common stance between AKP and BDP, it can be seen that our focus is shifting into entirely different areas, and that some type of a political reformism takes the lead, albeit with set boundaries. These areas can be listed as citizenship, the right of defending one's self in their mother tongue, the right to an education, limitation of the freedom of speech and the freedom of the press, presidential oath, National Security Council, Constitutional Court, Court of Accounts, judicial unity (abolishing Military Courts)... It is interesting that there is a rough concurrence within all the topics with a reformist understanding, they do not negate one another. It must not be forgotten that the harmony between the parties is never perfectly overlapping. And yet, it is important in this regard that they reflect a joint approach that does not object to each other, and does not alienate the other side...

To sum up, if Turkey is to start chasing its own global potential by solving the Kurdish issue, the road to such a venture shall surely go through collaboration between AKP and BDP. Because while collaborating with CHP largely implies the

reinforcement of the status quo, such collaboration with MHP suggests the dominance of a traditionalist point of view. Based on this fact, it is possible to say that AKP is actually more 'vulnerable' than it lets out to be, and that it has not yet been able to dismiss the effects of the fragility resulting from the implementation of change... We could in fact foresee that on the one hand, siding with CHP will render AKP more in favor of status quo, and doing the same with MHP will push them to the traditional side. On the other hand, it seems like a possible collaboration with BDP will have more to contribute in the production of a new constitution that is reformist in essence.

The following comparison could be laid on the table to see the picture more clearly: Which proposals by AKP fall in line with CHP, and yet cut against the grain of BDP? And in the same spirit, which proposals by AKP are compatible with BDP but not in line with CHP? The answer to the first question takes us to the topics of freedom of speech and freedom of the press together with relations between central and local governance bodies, and an accord is reached at a point that favors the status quo in all three areas. In other words, AKP and CHP collaboration in drafting will be largely counterproductive in the area of fundamental rights, and will be laboring under the load exerted by a solution towards the Kurdish issue. And the second question brings the following topics before us: citizenship, the right to defend one's self in their mother tongue, the right to an education, presidential oath, Constitutional Court, Court of Accounts, judicial unity... And reaching an accord on any of these topics carries the potential to achieve such accord on a reformist common ground. Therefore, it becomes quite evident that even though AKP and BDP may not be on the same page in all matters resolving the Kurdish issue, they are in fact quite close to one another in their respective stances on the structure of the state, the diversity of the society, and the creation of a new relationship between the state and society.

It is quite possible to foresee the two parties gravitating closer towards each other and ironing out both the traditionalism of AKP, and the radical reform demands of BDP to a point where the arms are laid down, and a route is planned for politics to include identities and opinions of all sorts.

It would help to acknowledge that the presidential system is actually nothing more than second-strings within this argument, and that it does not play the lead in terms of a solution to the Kurdish issue, or the democratization process for that matter. This is why the presidential system is not categorically 'good' or 'bad' on its own. What is important is how its contents will be defined... AKP's request for such a government system for the purpose of enabling judicial oversight resounds in the form of a warning on the possibility of the emergence of new tensions, with an entirely new political polarization surrounding such tensions.



TESEV

Bankalar Cad.
Minerva Han, No: 2 Kat: 3
34420 Karaköy İstanbul
T +90 212 292 89 03
F +90 212 292 90 46
www.tesev.org.tr

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