

# Making of a New Constitution in Turkey

## *Monitoring Report*

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Ferhat Kentel, Levent Köker, Özge Genç



### INTRODUCTION

The redefinition of relations between state, society and individuals in the framework of a new state philosophy in Turkey and the transformation of the mentality of both the state and society along this line will carry Turkey onto a more democratic, pluralist and conciliatory political sphere. One of the milestones of this process is the making of a new constitution, that is initiated by the Turkish Parliament following the general elections of June 12, 2011, and expected to culminate in the adoption of a new founding document. An ideal constitutional process should be based on the demands and contributions of social groups and individuals and groups should be empowered to engage in politics in a way that has not yet been possible during the preparation of any other constitution in Turkey. On the other hand, presently, it is obvious that on a societal level there is an environment of lively yet stifled debate regarding the new constitution, as well as a number of flaws and issues in terms of how the process is functioning. However, the Constitutional Reconciliation Commission, formed in October 2011 with equal participation from all political parties represented in the parliament, and its members who have reached a consensus on the commitment to establish a new constitution with apparently genuine effort, create the expectation that the preparation of a new constitution will soon make headway. In the subsequent stages, political actors, civil society and media should play a significant role in terms of both contribution to and monitoring of the process.

The Turkish Economic and Social Studies Foundation (TESEV) Democratization Program aims to actively engage in the creation of a new constitution through monitoring, documenting and reporting on the process undertaken with the objective of meeting society's expectations. Within the scope of this project, the role, contribution and performance of the parliament, political parties, non-governmental organizations and the media are monitored and both positive and negative developments are documented. Solution-oriented interventions that provide guidance will also be made whenever the process comes to a deadlock throughout the project. Via parallel projects, the Democratization Program will also be conducting scientific, informative, and solution oriented work regarding issues that obstruct the reform process and contributing to create a platform of democratic debate in Turkey.

The outputs of the Monitoring the Constitutional Process Project include a Turkish website (<http://anayasaizleme.org/>) and an English website (<http://turkeyconstitutionwatch.org/>) where the constitution making process is documented; regular monitoring reports evaluating the role and contribution of political and social actors to the process; public and non-public meetings to debate the main issues discussed during the constitutional process; and the *Almanac* that will record Turkey's most critical three-year period which began with the constitutional process and which will constitute a reference point for the overall reform process in Turkey. The present report is the first monitoring report of the Monitoring the Constitutional Process Project and covers the period between October 1, 2011 and January 31, 2012.



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# Political Actors and the New Constitutional Process

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Turkey is at an important crossroads in terms of the quest for a new constitution. There is widespread social and political consensus on the fact that it is impossible to continue with the 1982 Constitution, which has been an object of debate since it was ratified because of both technicalities and the lack of legitimacy arising from its antidemocratic characteristic. There is no doubt that the existence of such a consensus does not guarantee the achievement of a new, democratic and civil constitution as popularly coined these days. Nevertheless, the fact that the social expectation for a new constitution has also been adopted at the level of political representatives and that this expectation is expressed through the Constitutional Reconciliation Commission created with the initiative of the presidency of the parliament constitutes a significant development. As will be examined in detail below, the Constitutional Reconciliation Commission, where all political parties with parliamentary groups are represented with three members each, has reached consensus on “setting aside the 1982

Constitution and creating a brand new constitution” and the creation/development of new subject headings, independent from the 1982 Constitution initiates a significant phase in the realization of the new constitution.

As will be recalled, in April 2007, in the environment of political tension and polarization instigated by the presidential election, Turkey encountered several intervention attempts on the democratic political process. The “e-memorandum” of April 27 and the Constitutional Court’s decision to suspend the presidential election constituted the main efforts to this end and the “early” general election held in July 2007 aimed at starting a new period. In this process, where a constitutional amendment made it possible for the president to be elected by the people, political tension culminated following the 2007 general elections, with the closure case against Justice and Development Party (*Adalet ve Kalkınma Partisi* - AK Party). Republican People’s Party (*Cumhuriyet Halk Partisi* - CHP), as the main opposition party and one of the most important actors of the polarization underlying the social and political tension, stood apart from all other parties in the parliament, namely AK Party, Nationalist People’s Party (*Milliyetçi Hareket Partisi* - MHP) and Peace and Democracy Party (*Barış ve Demokrasi Partisi* - BDP), (then called Democratic Society Party (*Demokratik Toplum Partisi* - DTP) in its stance against the new constitution. The aspiration to make a new constitution in 2007-2011 could not be realized

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in part due to the opposition from the main opposition party, but more importantly because of the adversity of the atmosphere of political tension.

Yet at the same time, major and minor cases of tension and crises arising directly or indirectly from the current Constitution continued to occur. The comprehensive amendment introduced to the 1982 Constitution in 2010, which had become a web of inconsistent rules in terms of the foundation of the states' fundamental structure, the approach to human rights and freedoms and the reorganization of relations among the legislative, executive and judicial organs, did not provide an adequate solution. As for the present, we can now observe that the main opposition party currently takes part in the Constitutional Reconciliation Commission for the creation of the new constitution and is contributing to the process.

There is no doubt that the provisions outlined in the constitution and in the laws are not the source of social and political issues; therefore these issues cannot be solved overnight, simply by rewriting the constitution and the laws. Many issues that seem to arise from the constitution and the laws may in fact arise from problems in implementation, caused by those who interpret them, or from a lack of democratic mentality, or even from deeper clashes between social groups and forces. Nevertheless, some issues do arise directly from the constitution and the laws. The ideological codes of the military, judicial and bureaucratic tutelary system in Turkey have been formulated on the basis of over seven thousand legal regulations that are currently in effect, starting with the 1982 Constitution. Although the new constitution does not constitute a final step in the process of democratization in this sense, it still is an important step in the sense of a change in

mentality, the transformation of society, democratic institutionalization, and the beginning of the legal reform that will configure the state.

## THE NEED FOR A NEW CONSTITUTION AND THE ISSUE OF SOCIAL-POLITICAL CONSENSUS

Having intensely discussed the constitution and related legal issues for six or seven years, Turkey has now reached the stage of social and political consensus on the creation of a new Constitution. The reasons for this may be enumerated as follows:

- (1) Turkey is unable to solve some of its most fundamental issues with the current constitution a basis. The principal issue is the "Kurdish issue," which arises from the approach to configure the Republic of Turkey as a monocultural nation-state. Some dimensions of this model, which is based on the building of a homogeneous national culture by the state itself, disregard and repress diversities based on ethnic and religious identity and, fall short of addressing this issue in the context of the "nationalist state" concept expressed in the 1982 Constitution. It is also clear that another extension of the nation-state model – the relation that the state has developed with religion – does not comply with a "secularism" that is in line with democratic standards, and issues arising from this situation cannot be solved on the basis of the current Constitution's concept of state.
- (2) In spite of all the amendments it has undergone, the 1982 Constitution, which prescribes an anti-democratic, tutelary state, continues to maintain the authoritarian model of the military regime

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of September 12, 1980 and therefore preserves a form of state that is unable to respond to the democratic demands of society. That is why it is essential that the 1982 Constitution is replaced by a new constitution that complies with democratic principles and values.

- (3) Within the Council of Europe, of which it is a member, Turkey is the country with the highest number of violations of human rights on the basis of judgments delivered by the European Court of Human Rights. The Constitution, which constitutes the basis of the whole legal system, is no doubt one of the fundamental reasons for this ignominious situation. This alone is sufficient to explain why Turkey needs to make a new constitution. Turkey's aim to accede the European Union (EU) also constitutes one of the most significant reasons for the need for a new constitution. It is clear that EU membership will not be possible without a new constitution that enables membership to a supranational organization.
- (4) Up to the present, Turkey has never had a democratic constitution that was created directly by the people. Now, through a democratic constitution created by the people, it will be possible to achieve a form of state with a high level of legitimacy.

The need for a new constitution has been expressed for quite a long time, for reasons that we believe to have summarized under these main headings. Unlike the period of 2007-2011, a consensus has been reached by all political parties with parliamentary

groups and this means that a significant stage has been realized in terms of the new constitution, where the Constitutional Reconciliation Commission has begun to work on the new constitution. Below are presented and evaluated the Commission's attitude and approach to the process of making a new constitution on the basis of the work it has been conducting since October 2011.

## **THE FORMATION OF THE CONSTITUTIONAL RECONCILIATION COMMISSION AND ITS WORKING PRINCIPLES**

As stated above, at the general elections in June 2011, all of Turkey's principal political actors had reached consensus on the need for a new constitution and following the elections one of the main items on the agenda was naturally that work on the new constitution should gain momentum. As such, Cemil Çiçek, President of the Parliament, began to chair the new constitutional process. The first step consisted of a meeting held on September 19, 2011, at the Parliament Presidency, where twenty four professors of constitutional and public law came together.<sup>1</sup> This meeting, which was of a consultative nature, was considered by Cemil Çiçek as the first step towards the initiation of the new constitutional process. One of the main outcomes of the meeting, where the method rather than the content of the new constitution was debated, was no doubt the discussion on whether the parliament is authorized to make the new constitution. According to the dominant opinion, the parliament is authorized as the "primary constituent power" to create the new constitution. It was clearly stated that the

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<sup>1</sup> For the meeting minutes, see <https://yenianayasa.tbmm.gov.tr> (only available in Turkish)

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view that an ordinary legislative power cannot make the new constitution without there being a “legal (constitutional) loophole” formed a minority view and that the view that the new constitution should be created by a “constituent assembly” to be established with this purpose – although it reflects an ideal situation – had been replaced by the view that the existing legislative power was able to create the new constitution.

Following the meeting, a Constitutional Reconciliation Commission (the Commission) was founded in the parliament on the model of “Reconciliation Commission” that has been successful during the extensive constitutional amendments of 1995 and 2001. The Commission, which consists of three members each from the four political parties with parliamentary groups, regardless of the seat distribution, held its first meeting on October 19, 2011 and following a series of meetings established its working principles in the form of 15 articles.

The most striking aspects of the working principles adopted by the Commission, which defines itself as in charge of “managing the creation process of the constitution and drafting the constitution,” can be summarized as follows:

- (1) The Commission aims to consult the individuals and groups that form society in Turkey on their views on the constitution and draft the constitution in the light of these views, through a comprehensively participatory process as much as possible.
- (2) The Commission will take all its decisions in consensus with all the political parties. The issue of whether the draft has reached “maturity” or not, which should arise in conjunction with the issue of whether the preparatory process of the new constitution is completed or not, is among

issues that will be decided on unanimously.

- (3) Political parties need to reach consensus on the amendments and additions to be made by legislative commissions and by the General Assembly on the draft constitution and it is stated that “in case consensus-based amendments are made on the draft text (the proposal) after it is submitted to the Presidency of the Parliament, the Constitutional Reconciliation Commission needs to be consulted.”

Besides the working principles, the Commission has also taken significant decisions concerning its work schedule. Accordingly, up to April 30, 2012, the Commission will confine itself to consulting different parts of society on their views and recommendations for the new constitution. Three sub-committees (political parties and constitutional bodies; professional organizations and unions; and non-governmental organizations, foundations and communities), formed by one member from each party, selected from among Commission members, are therefore collecting the views of social organizations in Turkey and “platforms” which, although not “legal entities,” conduct activities aiming to develop views on the constitution. The Commission is therefore consulting almost all non-governmental organizations and social groups, from universities and bar associations to

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*Due to the legal obstacles before the freedom of expression and organization, the individuals and organized/non-organized groups that constitute society in Turkey will refrain from expressing their views on the new constitution and they will subject their opinions to self-censorship because of the antidemocratic laws and practices that are currently in force.*

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associations, foundations and unions, from constitutional working groups to platforms dealing with women's and environmental issues and to political parties without parliamentary groups (or that are not even represented). The Commission has stated that up to April 30, 2012 it will not conduct any work on the content and drafting of the new constitution and that in this phase of the process, in which it aims to consult different segments of society, it has decided not to publish any of the input it receives on the new constitution. The Commission has also enabled citizens to express their views on the new constitution. Citizens are able to transmit their views and suggestions to the Commission by completing a form on the parliament website with their identity number. An evaluation of these processes will be presented in the second part of this report.

### **CRITICISM CONCERNING THE WORK CONDUCTED BY THE COMMISSION**

A number of critiques have been raised on the foundation and the work carried out by the Constitutional Reconciliation Commission. These critiques may be grouped under the following headings:

- (1) The main criticism concerning the foundation and the work carried out by the Commission is that the parliament is not authorized to make the new constitution and therefore this Commission cannot

exist. According to a similar view, the Commission is a committee that is not referred to either in the Constitution or in the Parliamentary Bylaws and therefore does not have any legal significance or authority.

- (2) To these views we may also add the view that the new constitution should definitely be created by a specially formed Constituent Assembly. According to these views, the parliament, formed as a consequence of elections conducted with a high election threshold, does not represent all the social groups in Turkey and, as a result of this election system, is dominated by the AK Party majority. The new constitution is therefore bound to reflect the views of the AK Party majority.
- (3) In terms of criticism that does not directly concern the Commission's existence, the main issue is that in order for the constitutional process to be constructed on a truly democratic basis, the legal obstacles before the freedom of expression and organization need to be abolished. According to this criticism, the individuals and organized/non-organized groups that constitute society in Turkey will refrain from expressing their views on the new constitution and they will subject their opinions to self-censorship because of the antidemocratic laws and practices that are currently in force.
- (4) The main issue emphasized in views that do not object to the parliament's authority to create the new constitution or to the Commission's existence but criticize the working principles that the Commission has agreed on, is the fact that Commission decisions will be taken through "consensus." According to this view, it is impossible for political parties that have already expressed their views on the new

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constitution and have clearly stated their “red lines” to reach a consensus. The fact that the Commission has agreed on the principle of consensus is proof that the constitutional process is a case of “stillbirth.”

- (5) The other criticism concerning the Commission’s working principles is that the Commission, which has no legal grounds and therefore no authority, is intending to seize the legal authority of the parliamentary permanent Constitutional Commission and the General Assembly. It is therefore inappropriate that the Commission, which as stated before, is not referred to in either the Constitution or the Bylaw, should subject to its consultation any amendment that the Constitutional Commission or the General Assembly, which are legally authorized organs of the parliament may make on the draft constitution that the Commission may produce after April 30 according to its working schedule.
- (6) The last issue, which has been emphasized following a decision that the Commission has taken recently, on January 10, 2012 to prevent the public release of views and suggestions it receives, is that the “secrecy rule” of the Commission’s work cannot be accepted. It is widely believed that the new Constitutional process should be conducted in complete freedom and transparency.

## RESPONSES TO CRITICISM

The views expressed publicly in response to criticism directed at the Commission’s existence and the work it conducts can be summarized as follows:

- (1) The claim that that the parliament is not authorized to create the new constitution is

a subject of debate in legal and political literature. According to some views on the concept of “constituent power,” the parliament does have this authority. The real issue in Turkey’s case is the belief that constitutions need to be created at “extraordinary” times and by “extraordinary” organs. All the constitutions of Turkish society up to the present have always been the product of either single party systems or of military *coups*. At present, both the majority of society and the political actors represented in the parliament agree on the view that society in Turkey needs a new constitution. Moreover, examples of new constitutions throughout the world, especially after World War II, demonstrate that the most valid method of creating a constitution is through normal legislative organs.

Although it may be true that the “Reconciliation Commission” is not a regular commission that is referred to in the Constitution or in the Bylaws and that in this sense it has no legal grounds, this model has been implemented during the extensive constitutional amendments introduced in 1995 and 2001 and has been successful. The Reconciliation Commission derives its existence and authority directly from the will and the decisions of political parties with a parliamentary group.

- (2) The current parliament has been created as a consequence of a campaign conducted by all political parties and based on the pledge for a new constitution and despite the election threshold of 10% it represents over 95% of valid votes. As for the AK Party’s situation, although the votes it received have increased in comparison to the previous election, the decrease in the number of seats is proof of the increase in the said quality of representation. Even if



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via an obligatory referendum, the AK Party does not have the power to create the new constitution on its own. Because of the current parliament arithmetic, a conciliatory process is obligatory for the new constitution and this can be seen as an encouragement towards a new constitution based on social and political consensus. At this point it should be emphasized that the AK Party does not have the necessary majority sought for changing the constitution by Article 175 of the current Constitution. This debate may change dimension in case the legal framework of the new constitution's enactment process is not established in line with current constitutional references.

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(3) It is true that at the level of laws and legislation in Turkey there are many regulations and practices that are antidemocratic and restrict the freedom of thought and expression. It is obvious that these need to be amended and become more democratic. While the Commission continues to work on the new constitution, there is nothing to prevent the parliament from enacting such regulations. Such regulations need to be carried out in order for the new constitutional process to take pace in a more democratic platform of debate. However, this issue should not be used to invalidate the Commission's work. Political parties may deal with this subject

without disrupting the constitutional process and may bring it onto the agenda through solution centered strategies.

- (4) Criticism concerning the working principle that decisions that the Commission agrees on "will be reached through consensus" disregards the logic behind this decision. According to this logic, if decisions were to be taken by the majority of votes rather than by consensus, in a Commission where all political parties are represented by an equal number of members regardless of their power of representation in the legislative organ, opposition political parties could outvote the majority party in the Commission. However, when the draft is voted in the General Assembly, the ruling party and the opposition would come up against each other and bring the whole process to a deadlock. The consequences of such a situation would be far from achieving the expected social and political conciliation on the new constitution. Moreover, suggesting from the very beginning that the political parties represented in the Commission cannot achieve consensus is tantamount to proposing not to begin the new constitutional process at all. In essence, the conciliation intended through the Commission's consensus condition aims to achieve conciliation in the parliament and therefore among society. It would not be right to state a priori that such conciliation is not possible.
- (5) The Commission reflects the common will of the political parties that its members belong to. Besides being individuals, Commission members also represent their respective political parties and by extension their parties' social base. As stated before, within the framework of the "Constitutional Reconciliation



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Commission” – successful examples of which exist in the history of the parliament in Turkey – the work conducted by the Commission should be seen as a way to meet the existing need for social and political conciliation, rather than as a way to undermine the legal existence and authority of the parliament. This is how the Commission and work on the new constitution and should be approached.

- (6) The fact that the Commission conducts its work in “confidentiality” aims primarily to prevent all the groups that public opinion is made of and the Commission members themselves from being drawn into debates regarding the new constitution’s content that may result in disagreements from the very beginning. Turkey has long been debating in detail all aspects of the constitution. The failure to create a new democratic constitution up to this point is related to a great extent to the fact that the relevant social and political actors look out for their own interests. The aim of “confidentiality” is therefore not to prevent the proper development of social and political will, but on the contrary, to prevent the distortion of this will in line with partial interests of this kind and overturn the probability that this process results in a deadlock. On the other hand, the possible negative consequences of the decision of asserting a “secrecy” are examined in the section on “civil society” and “media.”

## CONCLUSION AND EVALUATION

In Turkey’s search for a new constitution, political actors and therefore primarily the parliament and the political parties represented there, are the actors of a process that has begun to function without venturing into the content of the new constitution. This

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process depends on the consensus on the need for a new constitution, but it is also significant in that it contains the decision to create the new constitution by the parliament, via the “Constitutional Reconciliation Commission,” which is a result of the same consensus. We need to remember that in the period up to the 24th legislative year, which began after the 2011 general elections, the view that a parliament that consists of a majority of AK Party members cannot and should not create the new constitution found a significant amount of advocates in Turkey. It is therefore significant that those who advocated the necessity of a “Constituent Assembly” to be selected specifically for the new constitution – in line with this view that was an extension of the post-2007 crisis and of the highly polarized social climate in Turkey – changed their minds from a political perspective and reached a consensus on the creation of the new constitution by the parliament.

Within this context it should be said that the fact that while the Commission is conducting its work it is endeavoring to take into consideration as much as possible the views and suggestions of different parts of society gives rise to the thought that on the subject of the new constitution, the parliament is in effect acting as a “Constituent Assembly” based on a wide representative base. The most significant disadvantage regarding this process consists of the prohibitive regulations and

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practices before the freedom of expression and organization. These practices, which arise from certain provisions of the Turkish Penal Code and the Anti-Terror Law, and which violate the European Convention on Human Rights in essence, as stated also via the most recent decisions taken by the European Court of Human Rights, result in a feeling of mistrust among society regarding the political process in Turkey and therefore the creation of the new constitution.

Nevertheless, the debates on and the criticism brought to the new constitutional process should not conceal the advantages brought forth by this process. Whether this process which will lead to the creation of the new constitution that Turkey needs, proceeds in a positive way, is interrupted, or comes to an end, it constitutes a significant step on the path leading to the new constitution for the reasons presented below.

The Commission’s principle to reach a consensus on all decisions will reveal the subjects that both can and cannot draw a consensus. We will therefore have clear knowledge on the issues on which the political actors agree and disagree both before the process and in the following phases. This knowledge is as significant as the access to the new constitution, because it will enable society to understand what kind of a future the political actors envisage for Turkey.

In addition, in the case that this process is interrupted or comes to an end, it will be clear

who has caused this “failure” on which subject and on what grounds. In the case that such a disruption does occur, the constitutional issues on which society is not able to agree will become clear, and the relevant political actors will need to assume responsibility before a society that has high expectations concerning the new constitution. It should be clear that it is difficult for political parties to put at risk the political responsibility brought on by the failure of adopting a new constitution.

Finally, it should be said that the most fundamental obstacle before the progression of the new constitutional process consists of the “irrevocable provisions” of the Constitution currently in force, which political actors are known to be sensitive about. While some political actors draw a red line at the preservation of these provisions, others may draw a red line at their amendment. Although the probability of conflict may seem higher than the probability of conciliation in such a case, this process needs to bring these issues out into the open and the present proceedings seem suitable from this perspective. The views of social groups contributing to the constitutional process should also be understood clearly and taken into consideration correctly.

However, there is one other point that needs to be stated: the irrevocable provisions of Turkey’s current Constitution do not automatically form an obstacle before the creation of a new and democratic constitution. These irrevocable provisions emphasize via extremely concrete and fundamental expressions that the Republic of Turkey “is a democratic, secular and social state governed by the rule of law; ... respecting human rights.” But when it is necessary to develop these concepts, decisions are produced through interpretations that do not comply with a democratic state concept, on the basis of

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certain provisions expressed in the irrevocable articles of the Constitution and especially on the ideology of a “nationalist state,” as stated in the preamble of the current Constitution. The real issue therefore lies not so much with these provisions, as with practices that arise from the interpretations of these provisions and that do not comply with universal democratic norms. There is no doubt that if some clarity is achieved even only regarding this issue during the new constitutional

process, society in Turkey will have made significant gains. The points of disagreement that may arise when issues concerning the new constitution’s content begin to be debated in the next phase of the Reconciliation Commission’s work will reveal which elements in Turkey’s current Constitution do not comply with the universal criteria of a democracy based on the rule of law and which political actors are against the amendment of these provisions and on what grounds.

# Civil Society and the New Constitutional Process

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## A LIVELY YET STIFLED ENVIRONMENT OF DEBATE

Within the new Constitutional process, we can talk about two different social processes that at times converge and at times diverge. One consists of the meetings held under the initiative of Cemil Çiçek, President of the Parliament, and within the scope of the “Constitutional Reconciliation Commission.” The other consists of work conducted by a variety of political and social actors, unions, associations and foundations from different parts of society.

While up to now it was always thought that jurists were responsible for writing the legal text of the constitution and politicians for enacting the text written by the jurists, now society itself has the opportunity to espouse this process. In this sense we can say that in the period before October 2012 and especially between the referendum of September 12, 2010 and the elections, a significant change in mentality has taken place regarding the creation of the new constitution on the basis of social demands and participation.

## THE CONSTITUTIONAL DEBATE AT THE “CENTER”

In terms of media coverage, the Constitutional Reconciliation Commission, which took office on October 19, 2011, has become the focus of public attention for the new constitutional process. From that date onwards, the Commission has issued calls to 165 universities,

88 provincial bar associations, 60 political parties and thousands of associations and foundations. It has been reported that as of 27 February 2012, 90 universities, 18 professional organizations (12 unions and 5 confederations), 76 associations, 40 foundations, 19 political parties, 18 platforms, 3 think tanks, 7 provincial bar associations, 2 NGOs and 9479 citizens have responded to these calls. Moreover, many organizations have sent their recommendations to the Commission by mail or e-mail. The meetings and the contribution process will continue until the end of April 2012. However, these contributions – and especially presentations held for the Commission – are not all shared with the public by the organizations in question or by the Commission and this prevents the attitude of social actors from becoming a topic of public debate.

When we look at the current debates on the constitution, we see that society is not aware of different views originating from different parts of society, examples of which will be given below, and that these cannot therefore be included in public debates. In other words, views that are presented to the “center” are preserved only in the Commission’s records and online. These views were previously restricted to the “New Constitution” page on the parliament website, but subsequently it has become impossible to access them. The Commission stated that on the basis of a decision taken unanimously, “it had been entrusted with confidentiality” and that the

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relevant pages of the website had been closed off because “they wanted to protect these views from potential criticism and reactions” and “they did not want to cause conflict or polarization” on this issue.

Although it is possible to justify the secrecy decision up to a point, there is no doubt that “censorship in good faith” of this kind can be seen as a significant indication that the constitutional debate, where society should participate as a whole, is proceeding on a “mine field.” The secrecy decision demonstrates the “recognition of the current environment of tension” and that no attempts are made (or will be made) on the part of the state or the government to soothe this situation. In fact, we believe that “confidence building” steps in society would enable the “transparent” participation of a wide range of social groups.

On the other hand, press coverage has included only the “contribution” meetings that have taken place within the Commission. These meetings are conducted at the level of three sub-commissions, defined under the headings of 1) “political parties, constitutional bodies, universities,” 2) “professional chambers, unions” and 3) “foundations, non-governmental organizations, associations.” Between November 2011 and the present (February 27, 2012), sub-commission 1 has met with 36 organizations, including 14 political parties not represented in the parliament and 18 universities; sub-commission 2 with 28 organizations, including 11 unions at a confederation or sector level and 17 professional chambers; and sub-commission 3 with 45 associations and foundations, all of which add up to 109 bodies or organizations.

When we evaluate the way these meetings have been overall reflected in the press and public opinion and we take into consideration

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that the center of gravity of the constitutional debate has moved to the “Reconciliation Commission,” although strong professional organizations and unions have been included in the process, the number cited above cannot be said to be very high. In other words, it is not possible to say that actors from different parts of society who do not have a strong or “legitimate” voice – for example the Democratic Society Congress (*Demokratik Toplum Kongresi* – DTK) have been able to make themselves heard by the Commission. If we add to this situation the fact that a number of press corporations generally tend to feature only bodies and organizations whose views they uphold, it is difficult to talk about a growing platform of debate.

## EMERGING ISSUES

On the whole all non-governmental organizations have been indicating the main issues they believe should be included in the constitution (and/or in the preparatory process). However, when we look at these in detail, we see that different organizations place particular emphasis on different subjects.

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Although it is not possible to report the views of all NGOs here, we would like to examine certain priority groups via examples.

### The Constitution and Social Groups

For example, Confederation of Revolutionary Trade Unions of Turkey (*Devrimci İşçi Sendikaları Konfederasyonu* - DISK), which believes that it is impossible to create a liberal, democratic constitution in the current “environment of tension,” demands “the amendment of the Law on Political Parties, the Law on Basic Provisions of Elections and the Law on the Election of Members of Parliament, all of which are products of the September 12, 1980 military coup, as well as the amendment of the provisions of the Penal Code and the Anti-Terror Law that constitute an obstacle before the freedom of thought and of organization, and of the Law of Criminal Procedures provisions which regulate the specially authorized courts and violate the right to a fair trial” and accentuates in particular the need for “clearing the path” – which we will refer to below – within the constitutional preparation phase.

Moreover, “taking the necessary precautions to ensure that international treaties are enforced in domestic law” and “carrying out legal amendments that comply with International Labor Organization (ILO) treaties” stand out among the demands brought by DISK.

The Confederation of Public Laborers’ Unions (*Kamu Emekçileri Sendikaları Konfederasyonu* - KESK) emphasizes that the most fundamental point is “to move away from the September 12, 1980 Constitution’s concept of a single nationality (Turkish) and a single religion (Muslim Sunni) and from its patriarchal understanding and neoliberal essence.” Besides this general principle regarding constitutional content, KESK states that “the achievement of a democratic climate can contribute to the new constitutional process (only on condition that ‘the path is cleared’).”

Leftwing parties like the Labor Party (*Emek Partisi* – EMEP) and leftist professional organizations like the Progressive Journalists’ Association (*Çağdaş Gazeteciler Derneği*) also emphasize clearing the path (achieving freedom of press, thought and expression) and enabling the participation of wider segments of society.

On the other hand, unlike the above mentioned unions, the Confederation of Turkish Trade Unions (*Türkiye İşçi Sendikaları Konfederasyonu* – Türk-İş), which is another labor union confederation, states that it is necessary “to preserve the first four articles (of the Constitution) as is” and “to preserve the unitary structure of the state”, but echoing DISK, also demands compliance with ILO treaties; emphasizes the principle of “social state” against discrimination and advocates the concept of a constitution “that prioritizes the individual.”

Turkish Confederation of Employers’ Association (*Türkiye İşveren Sendikaları Konfederasyonu*, TISK) in line with its social class affiliation, advocates for the idea of an “economic constitution” that “will restrict the state’s role in economy and will bring into force a market economy”, and like Türk-İş, states that the first four articles of the 1982 Constitution and Article No 174, titled the

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“Preservation of Reform Laws” should definitely retained, and that “it is thanks to the principles of Atatürk that the Republic gains strength and maintains its vitality,” and “the principle of secularism is a golden principle that has played a very significant role in the strengthening and modernization of our Republic.”

## Unamendable Articles

When we take into consideration the attempts of think tanks like Turkish Economic and Social Research Foundation (*Türkiye Ekonomik Siyasal Araştırmalar Vakfı* – TESAV), which also advocates the preservation of the first four articles of the constitution, it becomes obvious that if the constitutional reform process does really become a subject of debate in public opinion, “the spirit of the constitution, its fundamental principles or red lines” will come to constitute one of the major fault lines.

We would like to take this opportunity to note that while some organizations such as the Peace Assembly (*Barış Meclisi*) emphasize the need to “question the founding philosophy and ideology of the Republic of Turkey” and to “cleanse the constitution of its militaristic, nationalist and security regime mentality and prepare the new constitution “on the basis of individual and social rights and freedoms,” other non-governmental organizations have “red lines.” We can observe that “pro-state” and “pro-government” reflexes are advocated not only by the state, the government and political parties, but also by social actors.

## The Constitution and Religion

However, we can see that apart from this “problematic” area and with some differences in terms of expression and emphasis, non-governmental organizations strongly demand the democratization of the constitutional content overall.

*It is not possible to say that any voice that could be identified as belonging “directly to the Kurdish people” has been reflected in the constitutional debate. In other words, while demands expressed locally are not reflected in the national public sphere (i.e. not featured in the media), the BDP appears as the only actor in this field.*

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Organizations whose distinguishing features are “religious” characteristics may be cited here. For example the Journalists and Writers’ Foundation (*Gazeteciler ve Yazarlar Vakfı* – GYV), which advocates for the idea of a “unitary” and “equal and constitutional citizenship devoid of ethnic definitions,” states that there is a need “to configure the administration in line with local principles, without damaging the country’s political integrity” and to “the Department of Religious Affairs should become autonomous so as to include all existing sects and belief groups.”

On the other hand, while the World Ahlul Bayt Foundation (*Dünya Ehli Beyt Vakfı*) emphasizes that the new constitution “should not include slogans that are based on racism and sectarianism, which feed ideologies and destroy our generations” and that “the state should retain equal distance from all beliefs and ethnic origins and neutral,” the Cem Foundation (*Cem Vakfı*), which is another Alevi organization, demands a constitution “where freedom of religion and conscience, i.e. ‘freedom of belief’ is referenced in the preamble; where the word ‘secular’ is defined clearly and transparently; and where the state is neutral in respect to all beliefs and does not discriminate among beliefs.”

## The Constitution and Ethnic Identity

It is clear that the issue of ethnic identities is another significant issue in the constitutional debate.



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The solution of the Kurdish issue, no doubt one of Turkey's most important challenges, may be defined as the foremost item on the agenda of the Kurdish population and of the BDP, which is the strongest political representative of the Kurdish population. However, paradoxically, it is not possible to say that any voice that could be identified as belonging "directly to the Kurdish people" has been reflected in the constitutional debate. In other words, while demands expressed locally are not reflected in the national public sphere (i.e. not featured in the media), the BDP appears as the only actor in this field. On the other hand, it is also necessary to note that for example the DTK has not responded positively to the Reconciliation Commission's request for a meeting to put an end to this "silence".

While constitutional demands regarding "Kurdish identity" are thus confined to BDP, the ending of the environment of political and therefore social conflict has great weight in the Turkey's Peace Assembly contribution to the constitutional debate. The Peace Assembly emphasizes "cleaning the path" in the preparatory phase of the new Constitution and states that it is imperative that "no more deaths take place".

The People's Constitution (*Halkların Anayasası*), which consists of NGOs that are members of different ethnic groups, such as the Laz, Circassian, Syriac, Armenian, Georgian, Hemşin, Greek, Kurdish, Ezdi and Pomak people who have united on the ethnic question, demands on the one hand the abolishment of all obstacles before a liberal constitution, including the election threshold of 10%, and on the other "a people oriented, liberal, egalitarian, democratic constitution that recognizes the existence of all cultures, identities, languages, religions and beliefs on our land and that guarantees the people's democratic and cultural rights."

As for the Circassians, the second largest ethnic group in Turkey after the Kurds, they have been observed as having a significant amount of active discussion around the constitution. For example, while a call of "transparent, free, unhindered preparation," as expressed in the People's Constitution, and demands for a Constitution that "guarantees identity, language and culture" has made the headlines in the *Jineps* newspaper, the Federation of Caucasian Associations (*Kafkas Dernekleri Federasyonu* – KAFFED) emphasizes "language education" in particular.

The Circassian Initiative for Democracy (*Demokrasi için Çerkes Girişimi* – DIÇEG), demands a constitution where "citizenship is redefined and purged of the emphasis on ethnic identity," which "instills the idea that everybody and all social groups are the real owners of the country" and "rejects standardizing and recriminating historical arguments in order to rehabilitate the collective memory of our society, which has been alienated from its own history."

## The Constitution and Women

The demand for a constitution that improves gender relations, gender equality and women's status in society is expressed by a number of NGOs. The Women's Constitutional Platform (*Anayasa Kadın Platformu*), which expresses its vision "not only 'for women,' but for the whole of society and system with a 'women's/ feminist' perspective," demands the creation of an "Constitutional Assembly that takes into consideration social diversities as much as political differences and that has high social and political representative power," on the basis of an understanding that incorporates political parties within and outside the parliament and non-governmental organizations, the inclusion of women from all social groups and a 50% level of women's representation.

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At this point we need to indicate that there are other NGOs, such as the Human Rights Joint Platform (İnsan Hakları Ortak Platformu – IHOP), that emphasize gender equality as well, although they are not “women’s” organizations.

## The Constitution and the Disabled

An initiative called The Platform for the Monitoring and Prevention of Discrimination against the Disabled (*Engelli Ayrımcılığını İzleme ve Önleme Platformu Projesi*) states that it is necessary for the constitution to make an effort regarding a rhetoric and measures that endorse the “right to benefit equally of rights and the equality of opportunities”. It advocates an approach of “positive discrimination” and emphasizes the inclusion of principles such as “right to work, right and duty of education and training, personal freedom and security” in the constitution.

## CIVIL SOCIETY: ACTORS WHO SPEAK AMONG THEMSELVES (“WITHIN THEIR OWN COMMUNITIES”)

When we look at the actors in this process and especially at activities conducted by “civil society” organizations, we can say that they present significant dynamism. Up to the present, a great variety of social groups, civil servant, laborer and employer unions, chambers, non-governmental organizations, associations, local, ethnic, religious and political initiatives and initiatives founded specifically to work on the constitution have prepared constitutional drafts or proposals based on theme or content and they are continuing to do so.

Here we can see two different tendencies that may seem conflicting: while a very enthusiastic debate is taking place among these social groups resulting in extensive demands,

because the majority of media companies prefer to feature only the social and cultural groups they themselves champion, most civil society initiatives are generally confined to their own limited circles or to the restricted platforms that they are able to access.

Nevertheless, we still need to ask the following question: if we set aside the influence of the media, why is the internal communication of these groups – which are so enthusiastic – so weak? Why don’t the voices of these “communities” unite and become a strong voice?

There are undoubtedly many reasons for this state of affairs, but on the whole it is possible to say that the lack of trust various social groups feel for the state and the government, as well as for other social groups, plays an important role. In other words, the “weakened state of citizenship that does not trust in itself and in its capacity” created by state policies that present an authoritarian understanding and do not trust the citizens, and the “polarized political culture” constitute a significant part of the reasons behind the deadlock in the constitutional debate.

Contrary to their claims, the strategy to create a uniform nation with an understanding of tutelage and the ideology of nationalism, which disregarded and repressed diversities among different social groups (religious, sectarian, ethnic and cultural groups on the whole) and considered the expression of these diversities harmful, have created a fragmented society. Policies imported from abroad with a positivist logic and implemented in parallel

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*Everybody, because of a sense of deadlock, is reinforcing their own ideology based on preserving their own reality, and rather than working towards establishing a horizontal communication, striving to reproduce their own community as a protected environment, even on the subject of the constitution.*

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with a social engineering project imposed from the top have resulted in the withdrawal and segmentation of different communities for self-protection purposes, subsequently causing these different social and cultural groups to draw away from each other. On the other hand, in order to stand strong before other social groups, these communities adopted and recreated an authoritarian language and a statist-nationalist mentality. In a sense, every community while on the one hand standardizing and sanctifying its “diversity, has on the other hand recreated the authoritarian language of “uniformity” together with the state.

Widespread practices including Independence Tribunals, military coups, “deep state” operations like *Ergenekon* that laid the ground for the coups and bans on the freedom of thought and expression have continuously contributed to an environment of fear and mistrust. Each community adopted an authoritarian language in order to protect itself and impose its own color on the language of “uniformity” (and on others).

The lack of trust that has taken root in relations between state and society throughout the history of the Republic and the tension that reflects onto all social groups continues to be reproduced in our current political relations. This is manifest particularly in the polarized languages of actors close to the state, namely the government and the opposition parties, who have played a defining role in the reproduction of a polarized political culture up to the present.

At this point we can cite a statement by the Turkey’s Peace Assembly: “We can see this when we examine closely the speeches held every week during each political party’s parliamentary group meeting. The hate discourse that dominates politics renders the creation of a new constitution more and more impossible. This state of affairs makes people despair regarding the creation of the constitution and consolidates the lack of trust. The responsibility for the development of a political environment that is suitable for the creation of a constitution that will play a key role in the solution of social issues lies with the parliament.”

The constitution, which should reflect the plurality of society and should be the product of negotiations based on horizontal relations, seems to be deadlocked within the dual “us and the others” logic created by the tutelary mentality and the prevalent political culture. Therefore, similar to the “principles” that were considered “irrevocable provisions” in previous constitutions, each social and political group’s “indispensable” principles acquire practically vital importance and are sanctified.

The debate on the constitution, which had gained great momentum with the amendment of the 1982 Constitution with the referendum of September 12, 2010, now seems to have reentered a period of significant remission. In fact, the wish and the demand of all the different parts of society that the constitution be amended are suppressed in a sense. Everybody, because of this sense of deadlock, is reinforcing their own ideology based on preserving their own reality, and rather than working towards establishing a horizontal communication, striving to reproduce their own community as a protected environment, even on the subject of the constitution. However, as stated above, the GYV, known to be close to the Gülen community, and the World Ahlul Bayt

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Foundation (or the Cem Foundation) seem to have reached common ground for the renewal of a debate on the central issue of religion.

## IS IT POSSIBLE TO CREATE A “CIVIL AND DEMOCRATIC” CONSTITUTION?

In spite of this state of tension and polarization, when we look at the constitutional activities among different social groups and NGOs, we can see that the present situation is promising enough.

Provided that we do not forget the above mentioned state of tension and remission, what matters the most is that organizations and bodies that are developing proposals for the new constitution are not only debating, writing about and presenting their views on issues that directly concern them, but they are also developing ideas on what the constitution should entail as a whole. For example, labor unions (DISK, HAK-IŞ, MEMUR-SEN, Kamu-Sen, KESK, etc.), employer unions and associations (TISK, TÜSIAD, MÜSIAD, TUSKON, etc.) have been carrying out very detailed studies from their own perspective.

However, the most heated debate in civil society concerns demands around the issue of “cultural identities” and the situation of stalemate that has been reached here. For example, the issue of the protection and the preservation of different religions, ethnic backgrounds and identities presents itself as an attempt to overcome the consequences of a century long process of “modernization” and “nation-building.” Discussions of particular interest in this area include the Alevi debates on *cem evi*, or places of worship, and religion courses, the right to the mother tongue, starting with Kurdish, and the protection of vulnerable actors on the basis of the inclusion of gender identities (such as positive discrimination).

Many different initiatives such as the Human Rights Association (İnsan Hakları Derneği), the Organization of Human Rights and Solidarity for Oppressed People (*Mazlum-Der*), the Women’s Constitutional Platform (*Anayasa Kadın Platformu – KADER*), the Social Policies, Gender Identity and Sexual Orientation Studies Association (*Sosyal Politikalar Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği – SPoD*), the Children’s Summit of Turkey (*Türkiye Çocuk Zirvesi*), the Union of Southeast Anatolia Region Municipalities (*Güneydoğu Anadolu Bölgesi Belediyeleri Birliği*), Hak-Par, the Peace Assembly (*Barış Meclisi*), the Foundation of Religious Affairs (*Diyanet Vakfı*), the Hacibektaş Foundation (*Hacibektaş Vakfı*) and the Quincentennial Foundation (*500. Yıl Vakfı*) are developing proposals regarding the identities and communities in question.

On the other hand, reports are being prepared also in professional and specialist organizations such as the Union of Chambers and Commodity Exchanges of Turkey (*Türkiye Odalar ve Borsalar Birliği – TOBB*), the Parliament Reporters’ Association (*Parlamento Muhabirleri Derneği*), the Union of Judges and Prosecutors (*Yargıçlar ve Savcılar Birliği – YARSAV*), the Progressive Journalists’ Association (*Çağdaş Gazeteciler Derneği*), the Turkish Journalists’ Association (*Türkiye Gazeteciler Cemiyeti*), the Press Council (*Basın Konseyi*), the Turkish Education Association (*Türk Eğitim Derneği*); by research foundations such as the Journalists’ and Writers’ Foundation (*Gazeteciler ve Yazarlar Vakfı*), the Turkish Economic and Social Research Foundation (*Türkiye Ekonomik Siyasal Araştırmalar Vakfı – TESAV*), the Economic and Social Research Foundation of Turkey and the Turkish World (*Türkiye ve Türk Dünyası İktisadi ve Sosyal Araştırmalar Vakfı – TİSAV*), the Economic Policy Research Foundation of Turkey (*Türkiye Ekonomi Politikaları Araştırma*

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Vakfı – TEPAV) and by some universities, through the Council of Higher Education (Yüksek Öğretim Kurulu – YÖK).

Initiatives focusing on environmental issues, such as the Turkish Foundation for Combating Soil Erosion, for Reforestation and the Protection of Natural Habitats (*Türkiye Erozyonla Mücadele, Ağaçlandırma ve Doğal Varlıkları Koruma Vakfı – TEMA*) and the Ecological Constitutional Initiative (*Ekolojik Anayasa Girişimi*) are also contributing new perspectives to the constitutional debate. For example, when the Ecological Constitutional Initiative advocates the “right to environment” and formulates nature as a “subject,” rather than an “object to be used,” it signifies the plurality and creativity of voices in society.

Constitutional and bureaucratic bodies such as the Prime Ministry’s Human Rights Board should no doubt also be mentioned among organizations contributing to this debate. However, we can also observe that the state, judicial and political spheres, as well as the ideological molds of strong power centers within society create obstacles before all this plurality and the aspirations thereof.

Among these obstacles, the “fear of the judiciary,” which is widespread especially among identities that have always been marginalized, seems the most important. One of the most striking examples of obstacles resulting from this fear can be found in the

information required from citizens who wish to express their views on the webpage created by the Constitutional Reconciliation Commission: it could be argued that the requirement to provide one’s “identity number” in order to enter this site may be a significant factor of intimidation for citizens who feel powerless and anxious before the state.

The “irrevocable provisions” of the 1982 Constitution and the articles entailing these provisions also constitute legal and actual obstacles before many social groups that would otherwise express themselves in all their transparency. And the image of the state, which cannot provide protection from these provisions, creates the impression that the new Constitution will be “the AK Party’s Constitution.”

Therefore, although expectations are very high concerning demands and changes, a significant lack of faith exists among these groups regarding their inclusion in the making of the new constitution. Considering that the Hacı Bektaş Veli Anatolian Culture Foundation represents at least part of the Alevis, the fact that its president states that “they have no hope concerning the Constitution” and that the speaker of the Constitution of the Peoples initiative,” (*Halkların Anayasası*), formed by people of over 10 different ethnic identities, declares during the press conference that “they have no hopes regarding the creation of a better constitution” may be cited as examples for this lack of faith.

On the other hand, a statement by Cemil Çiçek, Chairman of the Constitutional Reconciliation Commission, that “the 1961 Constitution was broad, the 1982 Constitution was narrow, the new constitution will be somewhere between the two,” gives rise to the belief that whatever the demands may be, the new constitution will be limited in scope.

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The work carried out by the *Hürriyet* newspaper, which has realized a project that will enable society to contribute to politics and to the preparation of the new constitution and that has drawn a great deal of interest on the internet, can give us an idea of just how limited a scope is at hand. This newspaper, which in a sense is the pro-state tradition's cornerstone in the media and one of its means of ideological reproduction through a discourse coinciding with the language of tutelage, is able to state from the very beginning of this project that the "irrevocable provisions" are indeed "irrevocable" and therefore not open to readers' suggestions.

## CONCLUSION AND EVALUATION

In conclusion, it is obvious that a two-way action is necessary in order for civil society to really participate in the constitutional debate and for the constitution to really be a product of society.

The first of these includes measures which should originate from the government side to overcome the "lack of trust" and the environment of "fear" and to ensure "transparency." It is necessary to take such measures, referred publicly as "clearing the path," to abolish all obstacles before the freedom of expression and participation throughout the constitutional debate and to guarantee social actors that "nothing will happen to them," in short, to create an "environment of trust."

From this point of view we should draw attention to the fact that the AK Party, which has taken significant steps with the "democratic initiative," but then wavered and on the contrary, has emphasized an authoritarian and polarizing language and opted for military measures concerning the Kurdish issue, has been quiet about the

constitution. The AK Party, which seems to be relying more and more on the nationalist tendencies within its base of 50% and within society as a whole, can still be said to be the most important actor in strengthening the environment of trust and transparency that the "government" desires to achieve in spite of the counter attacks of traditional pro-state forces.

The following attempt seems to depend directly on steps to be taken by non-governmental organizations. Nevertheless, here too it is important to overcome civil society's current polarized environment. Although the vast majority of civil society agrees that the 1982 Constitution needs to be amended, when we look at the stance that NGOs take regarding the constitution, we see that there are three distinct stances and attitudes. The first of these is the group that subjects change to certain restrictions and adopts a "conservative" attitude before a possible break away from the current underlying mentality on "redlines" and "irrevocable provisions." The second group is the complete opposite in that it aims for the new constitution to fulfill demands concerning social groups (especially in areas related to culture, such as religion, ethnicity and language) that have not been recognized up to now. The last group also strongly demands a constitution based on wider rights and freedoms, but it strives to facilitate dialogue and negotiations with different social groups and to create a constitution that can be considered a product of conciliation. It is obvious that it would be very significant if these groups, which tend to shun each other, could begin a dialogue.

On the other hand, we may assume that the more creatively NGOs can reflect the voice of the group they belong to or represent, the more they can attract media interest and therefore vitalize the constitutional debate.



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*Social groups that up to now have not been able to speak up sufficiently do not have a strong cultural capital behind them and in order to strengthen this capital it is necessary to take “confidence building” measures, to encourage them and even to provide them with financial support.*

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The problem we encounter here is that civil society groups such as NGOs, professional organizations and foundations all have a different level of power. For example, professional organizations that are not voluntary organizations but have political weight (TOBB, Bar Associations, etc.) and organizations that have strong political and economic power (TISK, TÜSIAD, MÜSIAD, etc.) find it easier to make themselves heard. But social groups that up to now have not been able to speak up sufficiently do not have a strong cultural capital behind them and in order to strengthen this capital it is necessary to take “confidence building” measures, to encourage them and even to provide them with financial support.

The meetings organized by the New Constitutional Platform (*Yeni Anayasa Platformu* – YAP) and by TOBB in a number of cities and districts in order to compile the views of society, local associations and individuals reveal significant clues regarding civil society’s ability to discuss issues among themselves.

Though not of the same significance, platforms where different organizations come together, such as the seven non-governmental and professional organizations that are members of the Economic and Social Council (*Ekonomik Sosyal Konsey*) (TOBB, TISK, TÜRK-İŞ, HAK-İŞ, KAMU-SEN, TESK and TZOB); the organizations that meet under the “Constitutional Platform” (TÜSIAD, TBB, TÜRKONFED, MÜSIAD, MEMUR-SEN, TUSKON, ASKON, TÜGİK, KAGIDER, KADER, TÜGIAD and TVYD); and other organizations that are close enough to each other to at least “talk,” have drawn important experiences from these meetings.

In short, although the constitutional debate’s center of attraction and area of interest has moved towards the “Reconciliation Commission” and the relationship between the state (the government) and society – as observed in the media – seems to have been severed, there is no reason for the process not to be vitalized via steps to be taken on both sides. And if we consider that there is time until the end of April, it is not too late. This process will be facilitated if the views of different actors and their activities in civil society can ensure “mutual interaction.” Reviewing the secrecy decision and sharing all the presentations and contributions with the public would constitute a significant step in terms of ensuring the transparency of the process.



# The Media and the New Constitutional Process

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The media plays a critical role in terms of reflecting the political and legal process behind the creation of a new constitution, as well as society's demands, extensively, correctly, transparently and efficiently. If the media manages to show more determination and interest in the creation of the new constitution, which is one of the most important issues in Turkey's transformation process, it will be able to monitor the process on behalf of society, encourage the relevant actors to contribute to the process by reflecting society's, citizens' and their own concerns and enable them to shape the text that will emerge at the end of this process. Within the new constitutional process, the media is expected to provide public opinion with accurate and sound information on the participation mechanisms, content and developments of the process to generate an environment of lucrative debate by featuring and publicizing the discussions in society and among political actors throughout the process. The media is expected to adopt a pro-democratic attitude throughout this process. When we look at the history of the press in Turkey, we can see that the media has not complied with democratic norms on numerous critical junctures. In this sense, the new constitutional process may constitute a significant turning point in terms of re-organizing relations between media and politics and between media and society in Turkey, as well as an occasion to make amends for missed opportunities and mistakes from the past.

The TESEV Democratization Program is following 13 newspapers in the scope of the Constitutional Monitoring Process. These newspapers include *Sabah*, *Milliyet*, *Hürriyet*, *Radikal*, *Zaman*, *Taraf*, *Cumhuriyet*, *Star*, *Yeni Şafak*, *Özgür Gündem*, *Bianet*, *Aydınlık*, *Şalom* and *Agos*. Between October 31, 2011 and February 2012, the newspapers that have covered the new constitutional process most extensively way **Zaman** (54 news items, 3 columns, 3 interviews, 28 commentaries); **Taraf** (43 news items, 11 columns, 3 interviews, 3 commentaries, 3 readers' columns); **Star** (38 news items, 14 columns, 15 commentaries, 1 interview); **Cumhuriyet** (30 news items, 21 columns, 3 commentaries); **Radikal** (27 news items, 15 columns, 24 commentaries, 2 interviews) and **Milliyet** (27 news items, 17 columns).

The fundamental attitude displayed by the press regarding the new constitutional process since October 19, 2011, when President of the Parliament, Cemil Çiçek held the first meeting with professors of Constitutional Law, can be summarized as follows:

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- (1) **The central role played by Cemil Çiçek, President of the Parliament**, as well as Chairman of the Constitutional Commission, is given prominence in most coverage and both the visuals and the content refer mainly to Çiçek and to the meetings he has attended;
  - (2) Apart from the news concerning Çiçek’s statements and the work conducted by the Constitutional Reconciliation Commission, it is clear from commentaries and columns in the media that interest in this process is less than **it should be on a historic occasion such as the making of a new constitution; there is high expectation regarding the new constitution, but the approach to the result of this process varies in line with the current political conjuncture;**
  - (3) The organizations and groups that provide views on and contributions to the constitution receive little coverage in the press; moreover, **proposals by many non-governmental organizations and constitutional platforms/initiatives are not featured much, apart from in newspapers affiliated with the political views of the groups in question;**
  - (4) The constitutional demands of groups and individuals who are generally excluded from the mainstream media due to their ethnic, **religious, sectarian and gender identities, yet who have found the opportunity to make themselves heard and to be engaged in politics like never before in the social debate , are still not featured and reflected sufficiently in the media;**
  - (5) Although some columnists in newspapers like *Aydınlık* and *Cumhuriyet*, which are assumed to oppose the current government, as well as in other newspapers, adopt a negative attitude concerning this process, they nevertheless show interest in developments and force themselves to be included in the process;
  - (6) The press “reflects” views, rather than endeavoring to provide guidance, to contribute to the debate and to offer information and **it abstains from raising new debates that could contribute to the process.**

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*While the Constitutional Platform, which is provided visibility via TOBB, MÜSIAD, TÜSIAD, HAK-IŞ, TESEV, the Hacı Bektaş Foundation and the Turkish Journalists’ and Writers’ Foundation are the most prominent social groups in print news, the draft constitution prepared jointly by the Human Rights Association, the Equal Citizenship Initiative (Eşit Yurttaşlık Girişimi), the Federation of Caucasian Associations (Kafkas Dernekleri Federasyonu), the Jewish Community of Turkey (Türk Musevi Cemaati), the Social Policies, Gender Identity and Sexual Orientation Studies Association, the Turkey’s Peace Assembly and Kurdish political parties and movements and proposals by the Democratic Society Congress were featured very limitedly in the press.*

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While the Constitutional Platform, which is provided visibility via TOBB, MÜSIAD, TÜSIAD, HAK-IŞ, TESEV, the Hacı Bektaş Foundation and the Turkish Journalists’ and Writers’ Foundation are the most prominent social groups in print news, the draft constitution prepared jointly by the Human Rights Association, the Equal Citizenship Initiative (Eşit Yurttaşlık Girişimi), the Federation of Caucasian Associations (Kafkas Dernekleri Federasyonu), the Jewish Community of Turkey (Türk Musevi Cemaati), the Social Policies, Gender Identity and Sexual Orientation Studies Association, the Turkey’s Peace Assembly and Kurdish political parties and movements and proposals by the Democratic Society Congress were featured very limitedly in the press.

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The views of political parties with and without parliamentary groups regarding the new constitution were also not covered extensively by the press. At the beginning of the process, in October and November 2011, quite a number of news items emphasized the red lines drawn by parties (especially CHP and MHP). Later there was a decrease in news of this kind. At the beginning of the process, news and headlines ascribing negative connotations to the process were higher in number. For example, news headlines have included “The New Constitution Will Bring a Federation” in *Milliyet* (October 24); “The Civilian Constitution is Behind Closed Doors” in *Cumhuriyet* (October 21); “The Commission’s First Disagreement is about the Chairman” in *Cumhuriyet* (October 20); “This Constitution Seems a Little Difficult” in *Taraf* (November 4); and “The Opposition is Trapped by the Commission” in *Aydınlık* (November 2). Negative views of this kind were later replaced by more neutral, informative and even positive views on the constitutional process.

On the other hand, unlike some press articles that interpreted the constitutional process positively, some columnists have acted indifferently and impassively regarding the process. Especially columnists who guide Turkey’s democratization process with their articles and analyses showed very little interest in the new constitutional process. Columnists who covered the process most included Melih Aşık (*Milliyet*), Yavuz Donat (*Sabah*), Engin Ardiç (*Sabah*), Fatih Altaylı (*Habertürk*), Yalçın Doğan (*Hürriyet*) and Mümtaz Soysal (*Cumhuriyet*), most of whom have criticized the process. On the other hand Mehmet Tezkan (*Milliyet*) and Fatih Çekirge (*Hürriyet*) were among the journalists who followed the work at the Commission and the statements given by Çiçek and featured them in their columns.

*When secrecy is introduced to the constitutional process, which is realized in the monopoly of political personalities, the media will not be able to carry out a transparent and neutral supervision of the process and generate public opinion and contribute to the process with the aim of achieving social consensus.*

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An example of the limited coverage of news and analyses on the process can be seen in the fact that only *Cumhuriyet*, *Milliyet* and *Radikal* referred to the “secrecy” decision regarding the removal of contributions to the Constitutional Reconciliation Commission from the parliament website. We have previously mentioned that the secrecy decision constitutes a negative development by itself. It is necessary to state that the secrecy decision may constitute an obstacle to media news on the constitutional process and that this would not comply with the role ascribed to the media as an actor of democratization. When such secrecy is introduced to such a process, which is realized in the monopoly of political personalities, the media will not be able to carry out a transparent and neutral supervision of the process and to generate public opinion and contribute to the process with the aim of achieving social consensus.

Throughout the process which has been continuing since October 2011, issues of significance on the creation of the new constitution and concerning the method rather than content have also not been featured sufficiently by the media. Issues that should have been discussed especially since the constitutional content is not discussed, such as **“a short versus long Constitution,” “whether the parliament is authorized to make a new constitution,” “the working principles of the Constitutional Reconciliation Commission and the decision by consensus,” “who the constitutional text should be drafted by,”**

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*When media monitors and records the constitutional process, they should increase their coverage of the contributions of a wide range of social groups and play an active role in the process by regularly sounding out public opinion. By this way, the media can influence through news items, interviews and surveys the political actors who are included in the process and guarantee that they do not break away from the making of a new and democratic constitution.*

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**“the classification of views presented to the Commission”** and “how the enactment of the new constitution will be established,” have either been featured briefly or not at all.

Within the Constitutional process, great emphasis has been placed on the restriction of freedom of expression. The process of “clearing the path,” expressed and demanded mainly by opposition parties like BDP and CHP, has become part of the public agenda because it was referred to frequently in newspapers and has shaped public opinion’s attitude to the conception of the new constitution. This example is important in that it reflects the media’s influence on public opinion and on politicians. Although no significant steps have been taken in this direction, it is clear that the issue will continue to cast a shadow over the constitutional process and if the process fails, it will be brought back onto the agenda and will result in demands that politicians, who should have embraced this process, be called into account.

When *Hürriyet*, one of Turkey’s most widely read newspapers, organized a survey among its readers regarding the abolishment or amendment of constitutional articles, the fact that it took the current Constitution as the main reference and did not let readers vote on the first 3 articles was met with reaction. The results of this survey, which was claimed to

represent the views of at least part of society, were presented to the Constitutional Commission.

At times we have also observed some inaccurate news items in the press concerning the constitutional process. In the headline of a news item on Çiçek’s meeting with journalists on November 6, *Yeni Şafak* claimed that Rober Koptaş, a journalist from the weekly *Agos* newspaper, had said “As a Citizen I Felt Equal to Others,” although he had not said so. Moreover, on November 4, it was stated in *Taraf* that *Özgür Gündem* was among the media representatives that attended a meeting with Cemil Çiçek and the Constitutional Reconciliation Commission at the Dolmabahçe Palace in Istanbul. However, on the very same day, *Özgür Gündem* announced that they had not been invited to the meeting in question. The meeting was attended by 33 newspapers, 5 press agencies, 3 periodicals, 2 foreign newspapers and 31 television channels from all political wings, including minority newspapers. However, *Özgür Gündem* which is published in Turkish; *the Dicle Press Agency* and *Azadiya Welat* which are published in Kurdish and Turkish, *İho* which is published in Greek, and *Marmara* which is published in Armenian, were not invited.

## CONCLUSION AND EVALUATION

It is well known that non-governmental organizations need to work very hard to gain visibility in the media for their activities and publications. In this sense, it is very important in terms of the process’ success that the media extend its coverage of work and activities by social groups regarding the new constitution in the current critical phase and of different political and social groups’ views on content-related debates in the following phases.

When media monitors and records the constitutional process, they should increase

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their coverage of the contributions of a wide range of social groups and play an active role in the process by regularly sounding out public opinion. By this way, the media can influence through news items, interviews and surveys the political actors who are included in the process and guarantee that they do not break away from the making of a new and democratic constitution. But it is also important that citizens make strong demands on the press and media corporations throughout the constitutional process.

It will constitute another critical step in achieving a democratic environment of debate if organizations that have contributed to the process state their views through the media and the media in turn provide a clear and transparent evaluation of how these views have been reflected in the constitutional draft.

**What matters here is that these groups state their members' views and stances, rather than the contents of reports commissioned to jurists and academics.** Wider social groups will therefore acquire information on civil society's vision of Turkey's future, which holds influence on Turkey's political, economic and social sphere and their stances regarding democratic politics and norms. And it will thus become clear which views have been excluded from or included in the resulting constitutional draft.

Within the new constitutional process, which is expected to be completed in a very short timeframe, by the end of 2012, the follow-up of the process by newspapers and television channels through **reporters, editors and reader representatives** and the inclusion of the constitutional process within the framework of **public responsibility** would constitute a positive development.

## INTERVIEW – Mehmet Uçum, Jurist, Member of the New Constitutional Platform (Yeni Anayasa Platformu, YAP)

**How should the recommendations and contributions presented to the Constitutional Reconciliation Commission by NGOs, constitutional platforms, universities, other organizations and individuals be classified by the Commission?**

When the input collected from the public is evaluated and the guidelines and of the new constitutional draft are set forth, it is not appropriate for the “report on demands” to be prepared by the bureaucrats and specialists of the parliament. Specialists employed by official bodies that operate within the behavioral culture produced by the dominant system are restricted by its limits in their evaluations. These restrictions arise from the existing legislation, as well as from the behavioral norm of the institutional culture within which they exist. Therefore, if public views and demands are classified and reported by experts from within the parliament bureaucracy, a constitutional draft to be prepared on the basis of these reports can only be used as a revision document within the system framework.

The need for change in Turkey is shaped by public will. Reports on demands may constitute a basis for the “new constitution” only if public views that have been collected are subject to a neutral evaluation and classification. Only reports prepared in this way can reveal social needs without being subject to any form of censorship.

The Presidency of the Parliament and the Reconciliation Commission should therefore form a “Constitutional Working Group” that consists of individual representatives from outside the parliament and scientists from all disciplines and other professions, religious, ethnic and linguistic identities, different generations, different genders and disadvantaged groups. This group would carry out expert activities that would include a neutral evaluation of the views presented to the Reconciliation Commission and those collected beyond the parliament and preparing reports on demands. And the Reconciliation Commission should prepare the new draft on the basis of the rules and principles that emerge from the “reports on demands.”

**At the end of April 2012 the phase of soliciting contributions will come to an end. Is there enough time to review and analyze the suggestions made in the reports? If it is too late, what kind of compensatory measures should be taken?**

The fact that solicitation of public opinion ends in April 2012, according to the schedule established by the Parliament Presidency, does not mean that there will be no other possibility to provide input. During the drafting of the constitution, the opening of the draft to discussion and the enactment period in the parliament, new views can and should always be presented to the relevant commissions and to the General Assembly.

Moreover, the amendment of legal regulations that restrict or prevent the freedom of participation and of expression, a process referred to as “clearing the path,” can be realized very quickly. This would lead to participation on a broader scale. All of this depends on the political actors in the parliament regarding this as a common issue of higher politics, rather than one of party politics and displaying the political will to resolve it. In order to achieve this, it is necessary to increase social pressure on the parliament.

The main issue lies indeed in the fact that the Parliament Presidency and the Reconciliation Commission has conducted the solicitation of public views only through issuing calls, whereas what the Presidency and the Reconciliation Commission should do instead is to initiate a process of “Constitutional Dialogue” and transform it into a daily campaign. This should be a dialogue that reaches out to the smallest unit and to each and every district. All media, including televisions, radios, billboards and electronic media should be used for this purpose. The public will thus be able to change and facilitate their life through the views that they will provide for the new constitution and to reshape the state. An effective campaign can enable the parliament and all its political actors to reach a consensus on the new constitution. This is what we need at this stage.

In other words, it is still not too late. The new constitution is a century-old issue in Turkey and therefore there is no need to rush.





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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](http://www.tesev.org.tr)

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Atatürk Cad. Göl Sok. No : 1 Yenibosna  
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Tel: 0212 656 49 97