



TURKISH INDUSTRIALISTS' AND BUSINESSMEN'S ASSOCIATION

**PERSPECTIVES ON
DEMOCRATISATION
IN TURKEY**

**PROGRESS REPORT
1999**

Executive Summary



TURKISH INDUSTRIALISTS' AND BUSINESSMEN'S ASSOCIATION

**PERSPECTIVES ON
DEMOCRATISATION
IN TURKEY**

**PROGRESS REPORT
1999**

October 1999

(TÜSİAD Publication No-T/99-10/267)

Meşrutiyet Caddesi, No.74 80050 Tepebaşı/İstanbul
Phones: (0212) 249 54 48 - 249 07 23 • Fax: (0212) 249 13 50

“All rights reserved. No part of this publication shall be processed/adapted, reproduced, circulated, re-sold, rent, lent, represented, performed, recorded, transmitted with cord/cordless or any technical, digital and/or electronic devices without prior written permission from the author(s)/right holder subject to Article 52 of Law No.4110 amended by Law No.5846 for Intellectual and Artistic Works.”

ISBN : 975-7249-92-0

Lebib Yalkın Yayınları ve Basım İşleri A.Ş.

FOREWORD

TÜSİAD (Turkish Industrialists' and Businessmen's Association), which was founded in 1971, according to the rules laid by the Constitution and in the Associations Act, is a non-governmental organisation working for the public interest. Committed to the universal principals of democracy and human rights, together with the freedoms of enterprise, belief and opinion, TÜSİAD tries to foster the development of a social structure which conforms to Atatürk's principals and reforms, and strives to fortify the concept of a democratic civil society and a secular state of law in Turkey, where the government primarily attends to its main functional duties.

TÜSİAD aims at establishing the legal and institutional framework of the market economy and ensuring the application of internationally accepted business ethics. TÜSİAD believes in and works for the idea of integration within the international economic system, by increasing the competitiveness of the Turkish industrial and services sectors, thereby assuring itself of a well-defined and permanent place in the economic arena.

TÜSİAD supports all the policies aimed at the establishment of a liberal economic system which uses human and natural resources more efficiently by means of latest technological innovations and which tries to create the proper conditions of for a permanent increase in productivity and quality, thus enhancing competitiveness.

TÜSİAD, in accordance with its mission and in the context of its activities, initiates public debate by communicating its position supported by scientific research on current issues.

The following is the Executive Summary of the report entitled "Perspectives on Democratisation in Turkey, Progress Report 1999" prepared by Prof. Bülent Tanör.



Prof. Bülent TANÖR

Born in 1940 in Beylerbeyi, Istanbul, Bülent Tanör completed his secondary education at the Galatasaray Lycee (1951-1959) and his higher education at the Faculty of Law, the University of Istanbul (1959-1963). In 1964, he was appointed research assistant in the Department of Constitutional Law of the same Faculty. In 1969, he obtained a PhD in Law with his thesis "The Freedom of Political Expression and the Turkish Constitution of 1961". In 1978, he became associate professor with his thesis "Social Rights in Constitutional Law".

From 1983 to 1986, as a fellow lecturer at the Faculties of Law of Paris (Nanterre), Dijon, and Geneva, he gave lectures at undergraduate and postgraduate level on "Democracy in the Third World". In 1992, he was promoted to full professorship at the University of Istanbul.

At present, Professor Tanör teaches in the Department of Constitutional Law, Faculty of Law, University of Istanbul.

His works include: Two Constitutions (1961 and 1982); Local Congressional Powers in Turkey (1918 to 1920); Turkey's Human Rights Issue; Liberation - Foundation; Ottoman-Turkish Constitutional Developments (1789-1980); Congressional Powers in Turkey (1918-1920/Sedat Simavi Award, 1999) (All in Turkish); Perspectives on Democratisation in Turkey (TÜSİAD, 1997) (in Turkish and in English).



REFORMS UNDERTAKEN IN THE "POLITICAL", "HUMAN RIGHTS" AND "RULE OF LAW" DIMENSIONS OF DEMOCRATISATION IN TURKEY BETWEEN 1997-1999

Based on the report entitled "Perspectives on Democratisation in Turkey" (PDT), published by TÜSIAD in 1997, the following is an attempt to present a "balance sheet" and a "list of priority demands".

The reasons for creating a "balance sheet", so to speak, are twofold. Firstly, the balance sheet will indicate which of the proposals set forth in the PDT report were accepted as of August 29, 1999. Secondly, the "balance sheet" will denote which of the proposals were the subjects of the debate over bills presented to the Parliament while it was in session. The two tables below represent the key findings.

Of the propositions set forth in the PDT report, 28 proposed Constitutional amendments and laws have since been implemented, and another 17 are currently under discussion.

One must take into consideration that, similar to other studies regarding democratisation, the PDT report would not be functional if it were to claim to embody the absolute truth and total perfection. Exercises such as this "balance sheet" should be evaluated accordingly.

Furthermore, it is important to note that some of the changes or initiatives for change in the "balance sheet" result from the conditions arising from the efforts to bring the laws in line with the 1995 Constitutional amendments.

Table 1: Accepted PDT Propositions

Subject	Legislation	Changes
1. "The Acquisition of Assets" by political parties should fall under the provisions of the Law on Political Parties (LPP)	<ul style="list-style-type: none"> * Article 69 of the Constitution * Article 2 of the LPP 	<ul style="list-style-type: none"> * Article 18/5 of the Law regarding the Establishment of The Constitutional Court and Trial Procedures (4280-3.7.1997) * The amendment of Article 2 of the LPP with the law referring to making the changes (4445-12.8.1999)
2. Prohibitions concerning the formation of political parties	<ul style="list-style-type: none"> * Articles 68, 69 of the Constitution * Article 5/3 of the LPP 	<ul style="list-style-type: none"> * The removal of Article 5/3 of the LPP (4445-12.8.1999)
3. Organisation of Political Parties: Women's and Youth branches, organise/function abroad	<ul style="list-style-type: none"> * Article 68 of the Constitution * Article 7 of the LPP 	<ul style="list-style-type: none"> * Made possible by the amendments to Article 7 of the LPP (4445-12.8.1999)
4. Supervision of the formation of political parties by the chief Public Prosecutor	<ul style="list-style-type: none"> * Article 69 of the Constitution * Articles 8/final, 9 of the LPP 	<ul style="list-style-type: none"> * The removal of Article 9 of the LPP (4445-12.8.1999)
5. Membership in a political party: Members of the teaching staff and students in institutions of higher education-groups of age and individuals	<ul style="list-style-type: none"> * Article 68 of the Constitution * Article 11 of the LPP 	<ul style="list-style-type: none"> * Article 59 of the Law of Higher Education (4278-2.7.1999) * Changes to the LPP (4445-12.8.1999)
6. Primaries	<ul style="list-style-type: none"> * Article 37 of the LPP 	<ul style="list-style-type: none"> * A partial and marginal addition to Article 37 of the LPP (4381-31.7.1999) for the elections of April 18, 1999
7. Prohibitions on the activities of political parties	<ul style="list-style-type: none"> * Article 68 of the Constitution * Article 79/b of the LPP 	<ul style="list-style-type: none"> * Removal of Article 79/b of the LPP which prohibited organising/functioning abroad (4445-12.8.1999)
8. Ban on the auxiliary bodies of political parties	<ul style="list-style-type: none"> * Article 69 of the Constitution * Article 91 of the LPP 	<ul style="list-style-type: none"> * Removal of Article 91 of the LPP (4445-12.8.1999)
9. Ban on any form of cooperation between political parties and other organisations/associations	<ul style="list-style-type: none"> * Article 69 of the Constitution * Article 92 of the LPP 	<ul style="list-style-type: none"> * Removal of Article 92 of the LPP (4445-12.8.1999)

Subject	Legislation	Changes
10. Status of the dissolved political parties and their members	<ul style="list-style-type: none"> * Article 69 of the Constitution * Article 95 of the LPP 	<ul style="list-style-type: none"> * Amendment to Article 95 of the LPP in accordance with the Constitution (4445-12.8.1999)
11. Ban on any statements and declarations of political parties made against the military takeover of September 12, 1980.	<ul style="list-style-type: none"> * Article 97 of the LPP 	<ul style="list-style-type: none"> * Removal of Article 97 of the LPP (4445-12.8.1999)
12. Conditions to ban parties	<ul style="list-style-type: none"> * Articles 68, 69 of the Constitution * Article 101 of the LPP 	<ul style="list-style-type: none"> * Amendment to Article 101 of the LPP in accordance with the Constitution (4445-12.8.1999)
13. Dissolution of political parties	<ul style="list-style-type: none"> * Articles 68, 69 of the Constitution * Articles 102, 103 of the LPP 	<ul style="list-style-type: none"> * Amendment to Articles 102 and 103 of the LPP that requires clearer and more concrete conditions for party closures (4445-12.8.1999)
14. Financial support by the Treasury to political parties	<ul style="list-style-type: none"> * Article 68/final of the Constitution * Supplementary Article 1 of LPP 	<ul style="list-style-type: none"> * Grant assistance based upon the number of votes received as opposed to the number of seats in parliament (4445-12.8.1999)
15. Abuses by security forces	<ul style="list-style-type: none"> * Anti-Terrorism Act 	<ul style="list-style-type: none"> * The cancellation of a provision in the law allowing liberal use of firearms by security forces (not yet published in the Official Gazette/OG)
16. Torture	<ul style="list-style-type: none"> * Articles 243, 245, 354 of the Turkish Penal Code 	<ul style="list-style-type: none"> * Broaden the definition of crimes of torture and maltreatment to punish those found guilty with a harsher sentence (4449-26.8.1999) * Ratify the European Convention (4327-4.4.1997) * Prime Minister's Circular (3.12.1997) * Arrest and detention by-laws (O.G. 1.10.1998-23480 and 13.8.1999-23785)

Subject	Legislation	Changes
17. Personal Inviolability	* Criminal Procedure Law	* Ministry of Justice's Circular concerning virginity tests and allegations of adultery (21.10.1998)
18. Arrest and Detention	* Article 110 of the Criminal Procedure Law	* Amendments to the Criminal Procedure Law (4229-6.3.1997) * By-laws (O.G. 1.10.1998-23480 and 13.8.1999-23785)
19. Length of Detention	* Article 110 of the Criminal Procedure Law	* Extend the maximum length limits to the State Security Court detainees (4229-6.3.1997)
20. Religious Education	* National education regulations	* Increase compulsory education to eight years * the closure of the first three year section of Imam Hatip (Religious) Schools (4306-16.8.1997)
21. Supervision of Quran courses	* By-laws	* Securing the supervision and the enforcement of the Ministry of Education and administrative authorities by amending the related by-laws (20.8.1997)
22. Freedom of organisation	* Public Professional Organisations Law	* Time limitations and the need for a court's ruling for the cessation of public professional organisations' activities (4276-18.6.1997)
23. Freedom of Association	* Associations Law	* Liberalising changes (4279-3.7.1997)
24. Freedom of Trade Unions	* Trade Unions Law	* Narrow the scope of prohibitions on trade unions' activities (4277-26.6.1997)
25. Trade Union rights of public servants	* Public Servants Law	* Recognition of public servants' trade union rights (4275-12.6.1997)
26. Rule of Law and Judicial Guarantee	* Supreme Council of Judges and Public Prosecutors Law	* Members of the Supreme Council of Judges and Public Prosecutors may not hold other positions/duties (4443-21.7.1999)
27. Independence of the Judiciary, Fair Trial	* Article 143 of the Constitution * State Security Courts Law	* Removal of the military member of the State Security Courts (4388-18.6.1999 and 4390-22.6.1999)
28. The jurisdiction of the State Security Courts	* Criminal Procedure Law	* Limiting the powers of the State Security Courts (Criminal Procedure Law, 4229-6.3.1997)

Table 2: PDT Propositions which have been subject to discussion but have not yet been accepted by the Parliament in the period between 1997-1999.

Subject	Legislation	Proposals
1. Prohibition for political party support between different parties	* Article 90/2 of the LPP	* The removal of this section of Article 90/2 of the LPP (The Turkish Grand National Assembly Constitutional Committee)
2. Voting abroad	*Article 67/2 of the Constitution	* A proposal with 13 signatories for an amendment in the article
3. Prohibition on political parties over cooperation with each other during elections	* Article 16 of the Law on the Election of the Turkish Grand National Assembly members	* A proposal for an amendment
4. Holding administrative positions in trade unions or professional organisations incompatible with membership in the Turkish Grand National Assembly	* Article 82 of the Constitution	* The proposal of B. Ecevit and 187 of his peers (rejected in the Turkish Grand National Assembly Constitutional Committee)
5. Lifting the exemption on the provision regarding parliamentary irresponsibility and limiting parliamentary inviolability in the Turkish Grand National Assembly	* Article 83 of the Constitution	* The proposal of 292 parliamentarians did not receive the required number of votes in the Assembly
6. The Turkish Grand National Assembly/ Parliamentary investigations	* Article 100 of the Constitution * Article 111 of the Rules of Procedure	* A proposal to amend Article 100 of the Constitution in favor of those being investigated (True Path Party members)
7. The Turkish Grand National Assembly/ Revisions to the Constitution	* Article 175 of the Constitution	* Open vote principle for Constitutional Amendments treated favorably in the Turkish Grand National Assembly Constitutional Committee
8. Public Administration/ Relations between central and local administrative authorities	* Various legislations/regulations	* A bill on the division of functions and powers (The Turkish Grand National Assembly Planning and Budgetary Committee)

Subject	Legislation	Proposals
9. Capital Punishment	* Turkish Penal Code and some additional laws	* The proposal of Former Minister of Justice H. Denizkurdu to lift capital punishment during peace times looked unfavorably upon.
10. Freedom of expression	* Article 8 of the Anti-Terrorism Act	* A bill to amend the Article (The Turkish Grand National Assembly Justice Committee)
11. Freedom of expression	* Article 312 of the Turkish Penal Code	* A bill to amend the Article (The Turkish Grand National Assembly Justice Committee)
12. Freedom of association	* Associations Law	* A bill to amend some articles of the law
13. Freedom of meeting and demonstration marches	* Meeting and Demonstration Marches Law	* The proposal of A. Hacaloğlu and 9 of his peers
14. Trade Union Freedoms (See #4)	* Article 82 of the Constitution	* (See #4) Rejected
15. Trade Union Freedoms/civil servants		* Civil Servants' Trade Union Law (The Turkish Grand National Assembly Planning and Budgetary Committee)
16. Rule of Law and the supervision of the administration		* A bill on the establishment of the Settlement Councils (The Turkish Grand National Assembly Justice Committee)
17. Rule of Law and supervision of civil servants		* A bill on the Trial of Officials and Other Public Administrators (The Turkish Grand National Assembly Constitutional Committee)

The "list of priority demands" is essentially comprised of the necessary and possible initiatives imperative to the democratisation program of Turkey, and must therefore be undertaken. This concept may also be described as follows: Which reforms/changes will rank first in terms of the gains associated with them? Some of those listed below are also mentioned in Table 2.

1. Democracy within a political party is a problem of democratic culture rather than a legal issue. Hence, what the law can accomplish in this regard is rather limited. In this light, the holding of primaries open to all members, and if possible with a mandatory participation should become the rule.

2. Article 81 of the Law on Political Parties (i.e. the prevention of creation of minorities) must be removed in its entirety. There is a sufficient amount of provisions regarding the indivisible unity of the state and the nation in both the Constitution and the aforementioned law. The law in question should be removed due to the fact that it has resulted in the dissolution of political parties which have been loyal to the unitary state, and were conciliatory but have attempted to represent cultural identities. The dissolution of the Mass Democratic Party (DKP) is one such example. Furthermore, in light of the defeat of separatist terrorist movement, the repeal of this Article would lead to a peaceful resolution to the Kurdish issue within the unitary system.

3. The reforms that should be implemented in terms of the election process could be classified under the following two points: the removal of the prohibitions on cooperation and alliance, and the election of mayors with a two-round system. The first has already been the subject of several proposed bills. In terms of the latter, a broadly shared consensus – including the President of the Republic – was reached prior to the latest general and local elections. The national electoral threshold should be lowered since in the last election this resulted in the invalidation of over 6 million votes.

4. The section on parliamentary irresponsibility and inviolabilities should be re-organised under the heading "Parliamentary Immunities". Parliamentary irresponsibility means that parliamentarians can not be blamed for their statements

or votes, so the exception in the Constitution concerning this should be lifted. As a result of their widespread inviolability, parliamentarians have practically been given the right to commit crimes/offenses. These laws should be reformed in such a way that their prosecution is not rendered impossible.

5. Capital punishment should be limited to war and warlike conditions. Since 1984, Turkey has not executed any death sentences. Other countries went through a similar stage prior to banishing the death sentences— the time has come for our country to do the same. One must not forget that a harsher sentencing and confinement to life in prison is not a light sanction. Popularistic behavior and the abuse of amnesty laws should not serve to dilute such punishments.

6. The reforms and the sense of security resulting from the amendments to the Criminal Procedure Law should also extend to suspects being tried by the State Security Courts.

7. Taking into consideration that democracy can only exist and grow with individuals who are granted the freedom of thought and expression, radical changes involving the educational system of the country must take place. Two examples that come to mind include an end to the mandatory religious education and the exclusion of female students from studying in Imam Hatip High Schools. By the same token, the number of these schools should be limited to the demand for religious functionaries.

8. Two laws must be amended to prevent intellectual freedoms from being considered as “crimes”: Article 8 of the Anti-Terrorism Act and Article 312 of the Turkish Penal Code. Repealing the first would not have any significant drawbacks—punishments for the provocation of crimes or supporting terrorist organizations are already firm, and there are no objections to that. However, Article 8 of the Anti-Terrorism Act punishes the freedom of expression and must therefore be repealed. In terms of Article 312 of the Turkish Penal Code, the first paragraph must be completely removed and the second paragraph reworded so that “crimes of thought” would cease to exist.

9. The legislation regarding the freedom of meetings and demonstrations should be amended to suit the proposals set forth in Table 2. For example, authorities should be limited to a delay of 24-48 hours. The power to set prohibitions indefinitely should be lifted.

10. As a principle of the Rule of Law, the right to appeal all administrative acts and the decrees of the State of Emergency should be established. The "temporary" Article 15 of the Constitution that exempts the laws and decrees of the military rule (1980-83) from Constitutional jurisdiction should be repealed. To secure the guarantees and the independence of the judges and prosecutors, the preferences of the 1961 Constitution should be taken as the basis.