



## Analysis

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**Summary:** During the last decade, the Turkish constitution was the ultimate source of political crises on numerous occasions, but Turkey might be blessed with the greatest chance ever to create a new highest document. This policy brief outlines some of the ingredients that should be included, and argues that the process, and the final product, can be an inspiration for the Middle East and North Africa region as a whole.

## Creating A New Turkish Constitution: An Opportunity For Arab Spring?

by *Eray Akdağ*

### Creation: To Be Started Now?

Turkey set sail toward a new era following the June 2011 parliamentary elections. After years of throttling discussions, Turkey now has a more favorable environment to create a new constitution. The newly elected AK Party government, which came to power for a third term with a vote of almost 50 percent, states that a new constitution is a priority for the new legislative term. The prime minister, when reading out the government program at the parliament earlier in July, said “The nation expected the parliament to rewrite the constitution... The government and AK Party is fully determined about a new constitution, and as AK Party, we wish preparation of a new constitution with as broad participation as possible, and we wish that the new constitution will be a social contract reflecting demands of all social segments... The structure of the new parliament enables us to rewrite the constitution with the broadest representation and compromise....”<sup>1</sup> The three opposition parties in parliament — with their approximately 45 percent total votes — are also signaling a green light for this initiative. These political parties have

been voicing various demands, some obviously not compatible with each other, so democratic arm wrestling is underway. Yet, as famously quoted, “Even a garden of roses is full of thorns,” and Turkey might be blessed with the greatest chance ever to create a constitution, with 95 percent representation in the parliament. This is as good as it gets.

### Short Background or “The Need to Reform”

During the last decade, the constitution was the underlying source of political crises on numerous occasions. Is a quorum needed to elect the president, since it was not clear if “the qualified majority” described in the constitution defines “the needed attendance to the related session” or “the needed votes to elect the president in the first round”? Does the parliament have the ability to amend the constitution in certain areas? Historic case law was created when the amendment to the constitution to free head scarf usage in public areas was annulled by the Constitutional Court on grounds of a broad interpretation of the three fundamental articles that open the constitution. The much disputed and long discussed verdicts rendered by

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<sup>1</sup> AA — Anadolu (News) Agency: <http://www.aa.com.tr/en/constitutional-amendment-most-urgent-issue.html>



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the court remained far from creating any resolution to the *fons et origo* of the political problems, which were in fact initiated by the legalistic reading of the constitution itself.

Although one might easily argue that years and years of amendments resulted in much needed transformation, the indictment wouldn't provide a strong (*prima facie*) case; changing some, or even most, of the bricks doesn't change where the wall stands or where its withering shadow falls. It is true that an important number of articles — approximately 80 of 180 — have been completely or partially rewritten during the last quarter century. On the other hand, quality is much more vital than quantity in most cases, and there are still substantial changes that must be made.

### Ingredients of a Contemporary Constitution for Turkey

Before articulating the needs, we should acknowledge the progress. Thanks to the various amendments to the constitution, a great leap forward has been achieved, especially with the EU-inspired critical packages of 2001, 2004, and 2010, which included the abolishment of death penalty among many other improvements. However there is still a long way to go.

## The process of drafting a constitution is almost as important as the text to be adopted.

To start with, it should be emphasized that the process of drafting a constitution is almost as important as the text to be adopted, since the process helps to harmonize an orchestra of divergent elements. The drafting process should be open, transparent, and participatory. Effective participation of different cultural and religious segments of the society, members of various socio-economical groups, business, labor representatives, NGOs, and universities is one of the key elements of creating a contemporary constitution. This will create a delicious salad, which protects the attributes and vibrancy of different ingredients, rather than

a boring soup, which boils every ingredient into a thickened and dull homogenous structure.

A second crucial need is related to the main principles, rules, and foundations established by the constitution. Apart from the above mentioned unresolved core matters, the spirit and language of the constitution, which was originally written “during” a military coup in 1982, should change as well. The current text, spirit, and structure of the constitution is still perceived to be uncivil and limiting at the least.

In order to satisfy multiple demands, the ultimate goal should be creating a genuine social contract that will reflect all citizens' will to live together freely. This perspective leads us to a series of core values to create a new and progressive constitution that must establish a government based on human rights, include all necessary mechanisms to strengthen the rule of law, place the individual at the center, establish a strong connectivity among citizens of diverse backgrounds living together, and respond to identity inquiries through an approach that unites equal citizens over common values. It must also resolve problems related to the freedom of religion and conscience, and forge check-and-balance mechanisms to create an effectively functioning pluralist and participatory parliamentary democracy.

Although these core values create a clear perspective and vision, it is obvious that this road map needs to be further clarified when it comes to preparing a legally binding premier text. However, the constitution is not the appropriate medium for long outlines of various issues and technical details. Even so, a number of *sine qua non* conditions can be listed, which are not limiting, but rather illuminating.

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### The new constitution must address the three main issues that are dividing the society and transform them into three issues that consolidate the society.

First of all, the new constitution must address the three main issues that are dividing the society and transform them into three issues that consolidate the society. These issues —freedom of religion and conscience, identities, and the separation of powers (*trias politica*) — must be resolved in parliament through a consensus-seeking process that will foster wide participation.

Secondly, it is imperative that the bans on political parties be legislated in accordance with the European Convention on Human Rights. Penalties must be imposed primarily on *persons* whose actions are against the law, not on political parties.

Thirdly, the election system and the regulations governing the political parties have to be reformed. Although the 10 percent election threshold to enter the parliament is highly problematic, it would be just as problematic to underestimate the issue by degrading it to a simple arithmetic subject. The mechanics of the election system and related regulations must also be reformed to ensure fair and proportionate representation at the parliament and strengthen the relationship between constituencies and parliamentarians, further encouraging citizen participation.

Apart from these conditions, a new structure must be envisaged to guarantee and further improve academic freedom and sovereignty for universities.

Last but not least, it is essential to empower the participation of women in politics by providing special protections in the constitution.

### An Opportunity for Arab Spring?

It should be noted that this is a unique opportunity for Turkey to put together a new constitution through a democratic and widely participatory process. Although this might seem like yet another national issue for Turkey, it should be also recognized that this might be a unique opportunity for the whole Middle East and North Africa (MENA) region as well, especially as we are witnessing the unexpected and strong winds of the Arab Spring. The above mentioned set of values and conditions are applicable to any country who wants to reform or modernize its constitutional structure. Through this bright example, Turkey would create a great stimulus for neighboring administrations and encourage their peoples to move forward.

Despite the obvious reasons why Turkey can't directly be a model for at least most of the MENA countries (or the Arab world), it would be an equally obvious mistake to neglect the importance of indirect spillover effects of the developments in Turkey and the country's soft power within the region.

### Turkey would create a great stimulus for neighboring administrations and encourage their peoples to move forward.

First of all, Turkey is an invaluable source of inspiration for the whole area. Media that demonstrate the daily life and sophistication in Turkey, especially social media, are becoming more and more available to the peoples of various MENA countries. Turkey will also be visited by approximately 2 million tourists from the region this year, providing an example for these neighboring countries.<sup>2</sup>

The growth in Turkey's economy and resulting welfare and prosperity is also attractive. Turkey's macroeconomic success and flourishing lifestyle has the potential to lure increasing numbers of people from the MENA region.

<sup>2</sup> AA: <http://www.aa.com.tr/en/number-of-arap-tourists-grows-75.html>



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A third charm of Turkey would be the practice of the social government principle, which is already stated in the constitution and has become an important aspect of society. Years of political and social transformation paved the way to the creation of well-proven ways for better and wider social inclusion, which is obviously a critical problem in the MENA region, when one remembers how things started in Tunisia and quickly ignited a wildfire in the region.

To conclude, we should also remember that ever increasing trade relations between Turkey and MENA countries are smoothing the way for increased dialogue and cooperation while leaving less room for entropy. Adopting a new and modern constitution — especially through a wide consensus — would provide a solid anchor to rely on and a benchmark to compare with. Turkey now presents yet another opportunity to inspire Western-style reform and modernization to her neighbors, which would ultimately establish a win-win story for all of us: MENA, EU, and United States.

### About the Author

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