

# TURKEY NEEDS A NEW SOCIAL CONTRACT

*Turkey needs a new social contract to reverse economic slowdown, social polarization, internecine violence, and diplomatic isolation. The insistence on a presidential system, and the consequent failure of cross-party panels in 2013 and 2016 to draft a new constitution, however, have eroded enthusiasm for any further attempts. In this article, the author argues that Turkey could still make progress with the Constitution if it replaces its current fixation with the wholesale drafting of a new constitution with an incremental strategy. More than half of the articles of the 1982 Constitution have been amended over the course of the last three decades, including key changes that once helped bring Turkish legislation in line with EU norms. Turkey's quest for democratic governance as well as civil rights and liberties would again benefit from patience and taking small, incremental steps.*

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TURKISH POLICY  
QUARTERLY

Spring 2016

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decade ago, Turkey was hailed as a success story due to its booming economy, proactive foreign policy, and progress toward EU membership. Today the country is making headlines for different reasons: frequent terror attacks, rising polarization, deepening diplomatic isolation, and a flagging economy. Ankara urgently needs to reverse its course. This requires, first and foremost, a new social contract. Unfortunately, Turkey's current political climate makes that prospect unlikely.

Until recently, Turkey's civil society and political parties believed the main obstacle to economic, social, and political progress was the flawed constitution.<sup>1</sup> Critics condemned the charter, dictated by the junta in the aftermath of the 1980 Coup d'état, for placing the state's prerogatives above the rights of citizens.<sup>2</sup> They hailed the prospect of a new constitution, which would be drafted from scratch by the parliament, as a panacea for the country's democratic governance deficit. Pundits believed that freeing Turkey from military tutelage and its authoritarian and statist mentality – repeatedly expressed in the 1924, 1961, and 1982 Constitutions – would bring about a liberal democratic order.<sup>3</sup>

It was with much jubilation that many stakeholders endorsed the parliament's cross-party constitutional panel launched in the aftermath of the June 2011 elections. Critics feared the government's creeping authoritarianism following the September 2010 referendum that allowed the Justice and Development Party (AKP) government to redesign and control the judiciary, but many still wanted to believe that a new constitution would put Turkey back on track toward good governance and the rule of law.

The failure of the cross-party panel to draft a constitution, and its subsequent dissolution in December 2013, led to a dramatic shift in the overall mood. The panel consisted of an equal number of members from each party in parliament and did manage to reach a unanimous agreement on 60 articles. Despite that remarkable achievement – particularly in a polarized society like Turkey – the AKP's insistence on a presidential system brought the talks to a standstill.<sup>4</sup>

The same approach – a cross-party panel with 12 members – was given another chance following the November 2015 elections, but the talks collapsed after only three

<sup>1</sup> Ferhat Kentel, Levent Köker and Özge Genç, *Making of a New Constitution in Turkey: Monitoring Report – October 2011 – January 2012* (Istanbul, TESEV Democratization Program, 2012) [http://tesev.org.tr/wp-content/uploads/2015/11/Monitoring\\_Report\\_Making\\_Of\\_A\\_New\\_Constitution\\_In\\_Turkey\\_October\\_2011\\_January\\_2012.pdf](http://tesev.org.tr/wp-content/uploads/2015/11/Monitoring_Report_Making_Of_A_New_Constitution_In_Turkey_October_2011_January_2012.pdf)

<sup>2</sup> Michael M. Gunter, "Turkey: The Politics of a New Democratic Constitution," *Middle East Policy*, Vol. XIX, No. 1 (2012), <http://www.mepc.org/journal/middle-east-policy-archives/turkey-politics-new-democratic-constitution>

<sup>3</sup> Ergun Özbudun, "Turkey's Search for a New Constitution," *Insight Turkey*, Vol. 14, No. 1 (2012), [http://file.insight-turkey.com/Files/Pdf/insight\\_turkey\\_vol\\_14\\_1\\_2012\\_ozbudun.pdf](http://file.insight-turkey.com/Files/Pdf/insight_turkey_vol_14_1_2012_ozbudun.pdf)

<sup>4</sup> Gulsen Solaker, "Hopes fade for a new Turkish constitution," *Reuters*, 18 November 2013, <http://www.reuters.com/article/us-turkey-constitution-idUSBRE9AH0OV20131118>

sessions and the commission was dissolved in February 2016.<sup>5</sup> Again, the deadlock was caused by disagreements over the presidential system, a proposal strongly opposed by the three opposition parties.

Turkey's failed attempts for a new bill of rights seems to have eroded enthusiasm for any further effort. Much of the Turkish public still recognizes the need for amending the Constitution, but there are no viable strategies to overcome the political and social constraints that have thus far prevented compromise.<sup>6</sup>

What further undermines attempts at finding common ground is Turkey's transition to a de facto presidential system, amid Recep Tayyip Erdoğan's refusal since 2014 to be an impartial president as stipulated by the Constitution.<sup>7</sup> Prime Minister Binali Yıldırım, who replaced Ahmet Davutoğlu at the AKP's extraordinary congress in May 2016,<sup>8</sup> stated in his first address to party delegates that his most important mission was to "legalize" Erdoğan's newfound political role "by changing the constitution."<sup>9</sup>

*"It was with a jubilation that many stakeholders endorsed the parliament's cross-party constitutional panel launched in the aftermath of the June 2011 elections."*

The president's open disregard for the constitution has become a key point in the constitutional debates. The Democracy First Initiative – comprised of 237 signatories, including Republican People's Party (CHP) and Peoples' Democratic Party (HDP) legislators, as well as political dissidents – issued an open letter in May 2016 stating that it is not possible to draft a new constitution under the current political circumstances, and criticized the de facto "imposition of a presidential system."<sup>10</sup>

<sup>5</sup> Bülent Sarioğlu, "New Turkish Constitution talks collapse due to presidential system row," *Hürriyet Daily News*, 16 February 2016, <http://www.hurriyetdailynews.com/new-turkish-constitution-talks-collapse-due-to-presidential-system-row.aspx?PageID=238&NID=95299&NewsCatID=338>

<sup>6</sup> Güven Sak, "Why Turkey needs the constitutional commission," *Hürriyet Daily News*, 20 February 2016, <http://www.hurriyetdailynews.com/why-turkey-needs-the-constitutional-commission.aspx?pageID=449&nID=95450&NewsCatID=403>

<sup>7</sup> "Erdoğan: I will not be an impartial president," *Hürriyet Daily News*, 8 July 2014, <http://www.hurriyetdailynews.com/erdogan-i-will-not-be-an-impartial-president.aspx?pageID=238&nID=68831&NewsCatID=338>

<sup>8</sup> Aykan Erdemir, "Turkish Prime Minister Falls Victim to Palace Coup," *Foundation for Defense of Democracies Policy Brief*, 5 May 2016, <http://www.defenddemocracy.org/media-hit/turkish-prime-minister-falls-victim-to-palace-coup/>

<sup>9</sup> Hümeysra Pamuk and Gülsen Solaker, "Erdoğan ally takes over as Turkish PM, vowing stronger presidency," *Reuters*, 22 May 2016, <http://uk.reuters.com/article/us-turkey-politics-vote-idUKKCN0YD01W>

<sup>10</sup> "Önce Demokrasi Girişimi'nden uyarı: Bu ortamda anayasa yapılamaz," [Warning from the Democracy First Initiative: A constitution cannot be drafted under these circumstances], *Diken*, 27 May 2016, <http://www.diken.com.tr/once-demokrasi-girisiminden-uyari-bu-ortamda-anayasa-yapilamaz/>

That critique is eerily reminiscent of the views expressed at an October 2011 conference on “The Path to a New Constitution” in Istanbul. Many of the participants saw a need to “clear the path” for a new constitution by first amending Turkey’s anti-democratic laws, much as Spain did following the death of military dictator Francisco Franco in 1975.<sup>11</sup>

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After the failure of the cross-party constitutional panels in 2013 and 2016, and the subsequent disputes over the presidential system, Turkey seems to have come full circle, back to the debates held in 2011. Then, as now, proponents of such dialogue suggest that clearing the path by amending anti-democratic laws should be given priority over attempts to draft a new constitution.

Under the current circumstances, the opposition’s almost complete loss of interest in a new constitution will make the task of consensus-building more challenging than ever. Opposition parties will likely perceive any AKP offer to restart the talks as yet another ploy to grant legitimacy to Erdoğan’s de facto rule as an executive president. The opposition’s skepticism, in turn, will force the AKP to find majoritarian, non-consensual tactics to legalize that de facto situation.

The current constitutional deadlock is likely to be prolonged as more pressing challenges, such as the escalation of violence and foreign policy crises, take priority over civil rights and liberties. In Turkey, once again, the rights of the individual will have to wait.

It is, nevertheless, still possible to make progress with the constitution if Turkey replaces its current fixation with the wholesale drafting of a new constitution with an incremental strategy. The 1982 Constitution, for example, was amended seven times before the AKP came to power in November 2002, leading to the revision of almost one third of its articles.<sup>12</sup> Under AKP rule, the constitution has been amended 11 more times, resulting in revisions of 57 articles.<sup>13</sup> More than half the articles of the

<sup>11</sup> Özlem Kaya, *Yeni Anayasa Yolunda: Güney Afrika, İspanya, Almanya ve Polonya’da Anayasa Yapma Deneyimleri* [On the Path to a New Constitution: Experience of Drafting Constitutions in South Africa, Spain, Germany and Poland] (Istanbul, Friedrich Ebert Stiftung, 2012).  
<http://www.fes-tuerkei.org/media/pdf/einzelpublikationen/Anayasa%20Yolunda%20WEB%20version.pdf>

<sup>12</sup> “1982 Anayasası’nın yarısı değiştirildi,” [Half of the 1982 Constitution was amended], *Timeturk*, 24 September 2013, <http://www.timeturk.com/tr/2013/09/24/1982-anayasasi-nin-yarisi-degistirildi.html>

<sup>13</sup> “Türkiye Cumhuriyeti Anayasası’nda Yapılan Değişiklikler,” [Amendments to the Turkish Constitution], p. 43.  
[https://www.tbmm.gov.tr/anayasa/anayasa\\_2016.pdf](https://www.tbmm.gov.tr/anayasa/anayasa_2016.pdf)

1982 constitution have been amended over the course of the last 34 years, including key changes that once helped bring Turkish legislation in line with EU norms.

The Israeli political scientist Hanna Lerner, in her seminal work *Making Constitutions in Deeply Divided Societies*, highlights the importance of an “incrementalist approach” which “rejects the revolutionary understanding of constitution-drafting,” and argues that a consensus may be best achieved through “an evolutionary process of gradual social and political change.”<sup>14</sup>

As a deeply divided society, Turkey too needs an incrementalist approach to overcome social polarization and political impasse. Instead of a new constitution drafted from scratch, Turkish citizens need to gradually build a new understanding, a social contract, laying out the fundamental principles that will allow them to coexist peacefully despite differences. This, however, is only possible through deliberation, compromise, and the building of trust.

At Turkey’s current juncture, any push for a wholesale drafting of a new constitution is likely to undermine efforts to build that trust. Turkey’s path to democratic governance as well as civil rights and liberties requires patience and taking small, incremental steps.

A good starting point could be the 60 articles that all four parties agreed to back in 2013. As Turkey is drawn further into polarization and internecine violence, nothing could be more reassuring for citizens than to see their legislators finally working together for a common future.

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<sup>14</sup> Hanna Lerner, *Making Constitutions in Deeply Divided Societies* (Cambridge: Cambridge University Press, 2011), p. 42.