

2011 GENERAL ELECTIONS IN TURKEY AND THE PROBLEM OF NEW CONSTITUTION

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Abstract

June 12, 2011 general elections in Turkey led to unforeseen composition of the new Parliament (Turkish Grand National Assembly-TGNA-). Despite the threshold -% 10- that cannot be seen in any other states in the world, new TGNA represents the % 96 proportion of the population in Turkey. This presence of representation is an opportunity for new and communal constitution which has been required last three decades. This article explores the difficulties and problems on the way of making new constitution for Turkish Grand National Assembly that is consisted of general election in 2011. Furthermore, this study tries to address solution suggestions aforesaid and determines road map for the new constitution of Turkey.

Key words: general elections, civil constitution, consensus

1. Introduction

The major characteristic of democratic constitutional political systems is the general elections that are held in secure environments at the principle of equal voting periodically. In democratic elections, executive and legislative powers are determined by the public. In other words, as a result of elections, while the executive power is formed for the government, parliamentaries are formed for legislative activities and they obtain their legalities upon the approval of the public. Although elections were held in different periods between the years 1923, which is the date of the proclamation of the republic in Turkey, and 1950, the democracy could not gain the real functionality due to various reasons, such as the opposition prohibition, open vote, secret counting. Turkey completely adopted the democratic life and multi-party system with the general elections of 1950. As a matter of fact, the government passed in to other hands and new political actors started to appear in the Turkish political arena during this period. (Lewis, 2002; Zürcher, 2004; Günel, 2009) Considering the past from this aspect, it could be asserted that Turkey has covered a great ground and made progress in its democracy history of sixty one years, in spite of the occasional military interventions or coups.

The latest general election in Turkey was held on June 12, 2011. Political parties and other candidates who participated in the election independently from the political parties due to the election threshold of 10% made their political propagandas and arranged their promises before the latest general election, in an attempt to receive the votes and support of the public. Among these promises, the new and civil constitution is in the first place for all of the political parties. Because it is an unavoidable fact that the 1982 Constitution, which was prepared as a result of a military coup and is still in force, needs to be amended completely. In this study, the results of the 2011 general elections will be explained at the outset. Then the new parliament composition which is constituted in line with the election results will be mentioned and the significance of the consensus, regarding the preparation of a new constitution will be emphasized. And finally, some steps, which – in my opinion – are supposed to be followed during the preparation process of the new constitution, will be arranged.

2. Results of the 2011 General Election in Turkey

The new parliament composition of Turkey was constituted after the general elections, which were held on June 12, 2011. According to the resulting table, Justice and Development Party (AK Party), which increased their votes three times in a row and ranked first in elections in such a way that has never been seen in the history of the republic, received the votes of 49,8% (327/550 parliamentarians), Republican People's Party (CHP) received the votes of 25,98% (135/550 parliamentarians) in a relatively successful way,

Nationalist Movement Party (MHP) received the votes of 13,02% (53/550 parliamentarians) and Peace and Democracy Party (BDP), which participated in the election with independent candidates, received the votes of 6,59%.¹ It will not be wrong to use the term “hegemonic party” for AK Party, in spite of the decrease of the number of their parliamentarians compared to the results of the 2007 general elections.² (Yılmaz, 2011) Because examining the election map of Turkey, it is seen that it is the only party that can receive votes from all corners of the geography. Among the parties that entered the parliament, AK Party is doubtlessly the winner of the election. Apart from the rate of the received votes, when we consider the number of their parliamentarians, it is seen that AK Party is followed by BDP, which sent 35 parliamentarians to the parliament. Following a splendid election strategy in the eastern regions of Turkey, they increased the number of parliamentarians, which was 9 in 2002 and 26 in 2007, to 35 in 2011.

Although they passed the threshold, MHP failed in the elections. As mentioned above, MHP, which had a vote rate of 14,26% and 70 parliamentarians in the 2007 general elections, lost a part of their votes in these elections and had a vote rate of 13,02% and 53 parliamentarians. Needless to say, -as some of the sections claim- it is not true to consider the threshold as success for a rooted party like MHP, at the point of being successful or not. (Uğur, 2007; Doğan, 2000; Anadol, 1995; Uzun, 2006) The fact that a party which had formed a coalition with the government in the previous years, lives in fear of being unable to pass the threshold before the election does not give bright signals on behalf of the future. In this study, we do not mention the reasons that have brought MHP this far in detail. However, to accept and indicate, the most important reason for the vote loss of MHP is the attitude and political stance they have adopted since the referendum, which was held for the constitutional amendment of 2010.³

After the 2011 general elections, a parliament, which had the highest rate of representation to be seen in the Turkish democracy history, was constituted. Different election systems and election threshold practices that were conducted in previous years posed some problems for the representation of the public in the parliament. In spite of the election threshold of 10%, which is encountered in no country of the world and constantly criticized for being anti-democratic, 96% of the electors will be represented in the newly-constituted Turkish Grand National Assembly. This rate is considerably high and important for a parliament that is constituted with democratic processes. The constitution of a parliament that has such a high capacity of representation is associated with the promises of political parties, which require votes from electors by using all kinds of political propagandas before the elections. Numerous promises were used in newspapers, television, magazines and speeches for the purpose of requiring votes from the electors. (Şahin, 2011) The electors believed in these promises and voted for the political party that would represent them ideally. The result shows that political parties which have already entered the parliament satisfy the electors. Among these promises and election proclamations of political parties that took part in the elections, the most memorable one is the new, civil and more democratic constitution for Turkey.

3. The New Constitution for Turkey: Who Does Prepare the Constitution?

Within the scope of their definitions in literature and in the shortest saying, constitutions are social contracts. They are the rules that take the basic rights and liberties of individuals under protection in the face of the authority; arrange the tasks and authorizations of government bodies; in other words, the rules that determine the rules and limits of the relation between the ruling and the ruled. Considering the government as a ‘game’, constitutions are social contracts which present the playing rules at the beginning of the game. (Dorsen, 2003; Gözler, 2000; Kaboğlu, 2000; Öztürk, 2008; Özbudun, 2005; Özçelik, 1994) I have already stated that Turkey witnessed the new constitutional promises of political parties during the process of the general elections of June 2011.

¹ For the official results of the 2011 general elections, check the Newspaper dated 23/06/2011:

<http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2011/06/20110623.htm&main=http://www.resmigazete.gov.tr/eskiler/2011/06/20110623.htm>

² İhsan Yılmaz, *The AK Party's Hegemony*, Today's Zaman, 29 January 2011. However, it is good to underline a point. The most important reason for AK Party to have ranked the first and acquired the government in Turkey during the last three general elections is definitely the general president Tayyip Erdoğan. It will be a real hegemonic party only when it becomes the first in general elections that will be participated without Recep Tayyip Erdoğan.

³ A comprehensive constitutional amendment of 26 articles was made and presented to the public opinion in Turkey on September 12, 2010. As a result of the referendum, the constitutional amendment was put into effect with a vote of YES at the rate of 58%.

In parallel with their own ideological lines, political parties promised a new constitution and filled its content accordingly. However, rather than the content of the constitution, the main point is how to conduct it! In other words, as it is stated in the doctrine, how the fundamental constituent power is supposed to be formed and conducted constitutes the essence of the new constitutional issue of Turkey.

Fundamental constituent power is the person or persons, managements or constituent assemblies that write the constitution of a government for the first time. Fundamental constituent power is assigned or authorized to prepare a new constitution independently and *limitlessly*. What I want to emphasize by underlining the term limitless is to reveal the difference of the fundamental constituent power from the other constituent power that prepares the constitution, which is called the subsidiary constituent power. Having the power and authority of amending a present and applied constitution, the subsidiary constituent power is limited with the constitution to which it owes its existence. The constitutional amendment could be carried into effect when the conditions that are envisaged and permitted by the aforesaid constitution are formed.

To give an example on the basis of Turkey for the subject to be understood better, National Unity Committee and National Security Council, which were assigned to prepare the new constitution after the military coups of 1960 and 1980, are the fundamental constituent powers. Although the control was seized in undemocratic ways and a process that was not based on society's consent was experienced, the aforesaid commissions prepared the Constitutions of 1961 and 1982 without any limitation and put them into effect after the referendum. The parliaments, which made amendments on the constitution articles during 1969, 1970, 1971, 1973, 1987, 1995, 2001, 2004, 2007 and 2010 by fulfilling the conditions envisaged by the Constitutions of 1961 and 1982, amended the constitution under the title of subsidiary constituent powers. In these amendments, the parliaments are subordinate to and limited with the Constitutions of 1961 and 1982. (Negri, 2009; Loughlin & Walker, 2009; Gözler, 2008; Gözler, 1998; Gözübüyük, 2007)

3.1. Could the New Parliament Become the Fundamental Constituent Power? (Dilemmas)

From this point of view, I would like to touch upon difficult problems and dilemmas, which will occupy the agenda in Turkey in the following months and are hard to answer. Firstly the question, regarding whether the new parliament that has a representation rate of 96% could amend the constitution just like the fundamental constituent power or not, comes to mind. Because as I have explained above, there will be no limitation for the parliament if it becomes the fundamental constituent power. What I mean by limitation is the fact that the new parliament is not subject to the 1982 Constitution. In other words, could it be possible to write a completely new constitutional text by removing the protection shield on the first three articles, which are prohibited by the 1982 Constitution to be amended?⁴

Secondly, if the new parliament prepares a new constitution just like the fundamental constituent power, then why is the number 330 constantly articulated on the agenda? According to the 175th article of the 1982 Constitution, in order to make a constitutional amendment, at least 330 parliamentarians shall approve the amendment. If this number remains between 330 and 367 (much the same in the constitutional amendment of September 12, 2010), it is obligatory for the amendment to be taken to a referendum by the president of the republic. If it is 367 and above, then the referendum is under the initiative of the president of the republic. AK Party could have 327 parliamentarians during the general elections of 2011. This number is not adequate for a constitutional amendment under the title of subsidiary constituent power. However, does the number 330 that is envisaged by the 1982 Constitution have a meaning if a new constitution is to be made? Of course, I do not make a suggestion to prepare a constitution with a number below 330.

⁴ According to 1982 Constitution of Turkey Article 1: The Turkish State is a Republic, Article 2 : The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble. Article 3 :

(1) The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish. (2) Its flag, the form of which is prescribed by the relevant law, is composed of a white crescent and star on a red background. (3) Its national anthem is the Independence March. (4) Its capital is Ankara. And Article 4 Irrevocable Provisions The provision of Article 1 of the Constitution establishing the form of the state as a Republic, the provisions in Article 2 on the characteristics of the Republic, and the provision of Article 3 shall not be amended, nor shall their amendment be proposed.

Besides, a number below this majority shows the lack of a consensus that is required for the constitution. How right is it for a parliament, which aims to make a new constitution, to mention this number only because it is envisaged by the 1982 Constitution rather than for the sake of the consensus and find it necessary?

Thirdly, if we consider the newly formed parliament as the fundamental constituent power limitlessly, will not a dilemma with the 1982 Constitution occur? Because these elections and the subsequently-formed parliament were performed and elected in accordance with the rules presented by the 1982 Constitution. In other words, they owe their existence to the 1982 Constitution. Is it right for a parliament, whose composition is formed after elections, to make a new constitution by ‘ignoring’ the rules envisaged by the 1982 Constitution? On the other hand, if the situation is the direct opposite, we should remember the fact that it could only make a constitutional amendment rather than a new constitution. If the new parliament is to make only a constitutional amendment, then could the amendments from the 1982 Constitution until today present a solution?

Here, the truest and shortest answer to these questions is the **consensus**. If a constitutional text which is agreed by all of the political and civil actors and constituted on the basis of agreement, goes into effect after advisements, all the questions asked above will be answered. In case that a consensus is formed in the parliament, the number 330 will be exceeded naturally, a consensus will be formed for the first three articles that are prohibited to be amended and the new parliament will prepare a new constitution without being contradistinctive with the 1982 Constitution, just like the fundamental constituent power.

4. How is the Consensus created in the Process of Making the Constitution?

As Prof. Andrew Arato stated during the Fifth Seminar Series of Constitution Experts of Turkey’s Economic Policy Research Foundation (TEPAV) that was held in Turkey on May 17, 2011, consensus could be provided in two ways: *forced consensus and voluntary consensus*. Prof. Arato gives the Spanish Constitution as an example to constitutions that have been prepared with voluntary consensus in recent years. Although the right wing parties in the parliament had the majority to make a constitution on their own during the period of President Suarez in Spain, they chose to receive the support of socialists, communists and Catalan Nationalists and prepared a constitution with consensus.

When we read the results of the 2011 general elections in Turkey accurately, we will easily understand two subjects. **Firstly**, the electors voted for the stability to continue. **Secondly**, the electors believe that the new constitution should be prepared with consensus on behalf of the future of Turkey. Because it is a fact that AK Party came to power alone for the third time, but they could not have adequate number of parliamentarians to amend the constitution. I think that the first person who realized this situation is the leader of AK Party, the President Recep Tayyip Erdoğan. During his classic ‘balcony speech’ that was performed on the balcony of AK Party General Center in the evening of June 12, he insistently emphasized that although they could not have 330 parliamentarians, they have not given up on their promise of a new constitution and they would apply to the ideas of primarily the political parties, non-governmental organizations, universities and the intellectuals.

The example given to the subject of forced consensus by Prof. Arato includes the constitutional amendments that were performed in Turkey between 1987 (after the referendum) and 2001. During this period, the political parties, which could not provide the majority in the parliament that would amend the constitution alone, chose the way of forced consensus. Indeed, we suppose that the best example of this is the constitutional amendment of 2001. After a consensus, a comprehensive constitutional amendment was made within the scope of the adjustment laws of the European Union, during the coalition government of MHP, ANAP and DSP.⁵

5. Method in the Process of Constitution Making

The objective of the theory of preparing the constitution is to enable the consensus and present a text that would create the sense of belonging in all sections of society. In order to do this, there is a set of processes to be followed for sure.

⁵ Since two constitutional amendments occurred in 2001, the one that is mentioned here is the constitutional amendment dated 3.10.2001 and numbered 4709. For the detailed information, see Engin Şahin, "Constitutional Ground for Fundamental Rights and Liberties in the Process of Adaptation to the European Union", Journal of Yeditepe University Communicational Studies, No. 8, January. 2008, pp. 94-111.

The first one is related with the need of a new constitution in all sections of society. Since a method with the highest democratic participation such as the direct democracy can not be applied today, representative democracies have gained functionality. As a matter of course, the new constitution, which is required in the society, is supposed to apply to the parliamentarians of the society and to the political parties as well. Now that the requirement for a new constitution was among the most important promises of all political parties before the 2011 general elections, it was fulfilled on behalf of Turkey during the first stage of the process.

The second one is related with the necessity for political parties in the parliament, primarily the government party, to put aside their own ideological lines and come to the table. Considering the parliament constitution of AK Party, CHP, MHP and BDP, we see that they respectively represent the ideologies of liberalism, laicism, Turkish nationalism and Kurdish nationalism. It should not be forgotten to clear the constitutions of ideologies! Otherwise, instead of the constitution of the class that surrounds the society, the constitution of the prevailing class would emerge. It is not hard to see a mentality limited with ideology in all constitutions from 1924 until today, in the Turkish constitutional history. This ideological approach and mentality prevented the emergence of a text that surrounds the society in the strict sense in the Turkish constitutional history.

The third one is related with the necessity for political parties in the parliament to leave aside the absolute musts. They are obliged to do this at the very beginning, in order to reach the agreement and consensus as maximum as possible. When we do adverse mind exercise, we can see that the process gets obstructed from the beginning. For example, the process of the new constitution gets obstructed at the beginning, on condition that MHP objects to the application of education and local services in mother tongue in local governments of eastern regions, BDP objects to the expression of “Turkish Nation” which is included in the 1982 Constitution⁶, CHP objects to the first three articles of the 1982 Constitution which is not even proposed to be amended (we especially mean laicism here!) and to new regulations regarding the structure of positions and institutions that have a strategic significance such as the Presidency, Constitutional Court⁷, Supreme Council of Judges and Public Prosecutors, and AK Party objects to being tolerant on the table, due to the pride of possessing the majority. With this consciousness, all of the political parties are supposed to be constructive rather than destructive in the process of the new constitution.

The fourth one is related with the necessity for the civil actors to be involved in the business, as the process of constitution-making continues in the parliament. Non-governmental organizations, universities, academicians, journalists, intellectuals and writers should be able to express their opinions under the roof the parliament, if necessary. Views and opinions of different sections should be received for the new constitution, as much as possible. In recent years, a number of non-governmental and thought organizations in Turkey, such as Tüsiad, Tepav, Abant Platform, New Constitution Platform, have done studies and organized panels for the new constitution. The conclusions and proclamations that are drawn from here should be taken into consideration by political actors.

The fifth and the final one is related with, for instance, let’s say the new constitutional text of 100 articles has been prepared and yet it lacks a consensus on 20 articles. Political parties might render these 20 articles a matter of debate with different approaches, which is very natural. Because consensus is exactly defined as the agreement of a certain majority, rather than that of everyone. However, this majority is supposed to be qualified. In almost all countries of the world, constitutional amendments are made with a qualified majority in an attempt to provide the consensus. The outcome of articles, which lack the qualified majority that is envisaged under the roof of the parliament and the consensus, should be determined by the nation! The nation, which is the real ascendant, owner of the last word and the only dominant actor of democracy, should have the last word. By this means, the obstruction will disappear and the nation will become a part of the activity concerning their future and constitution, instead of their representatives.

6. Conclusion

Apart from the ways above which I suggested to be followed in the process of Turkey’s new constitution, an important step has been taken under the leadership of the TGNA president recently.

⁶ BDP is in a position of representation for the Kurdish-origin citizens in Turkey. 1982 Constitution of the Turkish Republic, on the other hand, recognizes all of the Turkish citizens as the Turkish Nation and the perception of homogenous society is in question.

⁷ Regarding the Turkish Constitutional Court, see Engin Şahin, *The Hegemonic Preservation Of Constitutional Courts: The Case Of Turkey*, Germany; Lambert Publishing, 2011.

Regardless of the vote rate they received, all of the political parties, which entered the TGNA under the name of 'consensus commission' as a result of the general elections that were held on June 12, 2011, were required to send 3 members. Political parties replied in the affirmative and the consensus commission has recently started their studies. The target is to prepare the new constitution as soon as possible – which is around 2012.

As a consequence, on condition that all these aforesaid things are fulfilled, Turkey can successfully attain a civil, democratic, humanist, participatory constitution, which has gone through a transparent process, was formed with consensus and abstains from impositions with its parliament that has a representation capability of 96%, which has never been seen before. The parliament composition and the political environment, which were formed after the general elections of 2011, generate an unmissable opportunity for Turkey's new constitution. Because electors are represented in the strictest sense in this parliament. The rate of total votes of political parties, which participated in the elections and yet could not enter the parliament, is approximately 3,8%. The number of electors, on the other hand, is approximately 1 million 300 thousand. While this number is considered to be inadequate compared to more than 50 million electors, the inevitable result of majoritarian democracies is that the demands of electors, who constitute the majority, are fulfilled. However, the presentation of the text of the new constitution, which is planned to be prepared, to the public in the final stage recognizes the electors who are not represented in the parliament once again and this is an important democratic right to be remembered.

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