

# A New Constitution for Turkey Without Democracy

Written by Murat Akan

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MURAT AKAN, JAN 12 2012

While the talks of a new constitution for Turkey receives attention as a venue for dismantling the military heritage of the 1982 constitution, the current context which impedes the writing of a societally driven, democratically robust constitution is lost from view under a façade of the moderate Islamists as the vanguards of anti-military politics and democracy in Turkey.

35 civilians, at least half under the age 20 have been killed by Turkish war plane bombing in Şırnak, Uludere at the Iraqi border on 28 December 2011. The number of arbitrary and longtime detentions by the police of journalists, artists, singers, theater players, lawyers, syndicate leaders, scholars, students, human rights activists, elected representatives in sum all democratic opposition, currently totaling at least 8000 custodies and 4000 detentions, hinder any possibility of a societal deliberation on a new constitution. For instance, two students were detained for displaying a placard demanding “free and public education” during a public speech of the Prime Minister, and released only after their third trial, having spent 19 months in prison. A singer was given 10 months in prison for mentioning in a concert a revolutionary activist leader who was tortured, killed and handed over to his father in pieces in the 1970s. A friend of the leader mentioned in the concert had stated in his trial in the 1970s that during his torture there was a U.S. officer in the room.

A theater actor who staged a one- person play on Karl Marx adapted to the Turkish context, similar to Howard Zinn’s Marx in Soho, has been tried and found guilty for insulting the Prime Minister with a joke during the play. A journalist who was investigating how a certain religious movement was taking over the police forces, and who penned a book entitled “The Army of the İmam” (the book was banned prior to publication), was arrested and charged with being a part of the very deep relations he was revealing through his investigation and he has been included in the Ergenekon trials. He had his first trial after 8 months of detention. The Ergenekon trials were launched to dismantle a coup prone military institution, but these trials are more and more looking like a restructuring of the military in line with the new bourgeoisie interests encapsulated in the AKP government; a preparation for a future “bonapartist” moment in case the contradiction between democracy and the economic interests of the bourgeoisie intensifies. A demonstration during the election campaign of AKP in May 2011 in Hopa, Artvin in North Eastern Turkey protesting against a government push nationwide for hydroelectric dams and tea prices ended with a police gas bomb killing a teacher. This police murder was followed by arrests and a court case opened against protestors who had their first trial after 5 months and were released because there was no evidence of any sort.

The most recent wave of mass arrests also included a faculty member who would have a direct role in the writing of the constitution, and also a publisher and human rights advocate who joined his son in prison. International Publishers Association called for the immediate release of publisher Ragıp Zarakolu, recipient of the 2008 IPA Freedom to Publish Prize. Professor Büşra Ersanlı is a faculty member at the Department of Political Science and International Relations at Marmara University, member of the Peace and Democracy Party (BDP), and the faculty member in BDP’s constitution commission. Ersanlı was arrested for giving a lecture on her own research in the “politics academy” of the BDP, a party organization which makes academic and field research meet the public through open courses by volunteers. The meeting place was being tapped by the police as well as many other BDP buildings, and in fact wide spread arbitrary and illegal place and phone tapping by the police had made headlines frequently in the past years.

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Middle East Studies Association wrote a letter to Prime Minister Erdoğan for the immediate release of Professor Ersanlı. The diverse examples of violations, all facilitated by the terror laws and the structuring of the police and the judiciary can be enumerated. Human Rights Watch has reported on some of these detentions, trials and court sentences. Turkey already has a heavy record of past witch-hunts, and it looks like we are facing another cycle. According to the Reporters without Borders (RSF) press freedom index, press freedom has steadily declined during AKP and many recent reports on Turkey, for instance one by RSF entitled "A Book is not a Bomb" or another one entitled "Turkey: Set Journalists Free" compiled collectively by an International Press Freedom Mission to Turkey, including the Association of European Journalists, Freedom for Journalist Platform in Turkey, RSF, European Federation of Journalists, International Press Association lay bare Turkey's race to the bottom in press freedom. The international petition campaign launched right after the last wave of mass arrests has currently passed 6000 signatures.

When it is a question of the criticism of the government and state policy, extremely long detention times before a first trial, never ending trials, continuously re-appointed judges, a media which runs ahead of the judiciary system and leaks information on cases which have not even reached the lawyers concerned is the rule. But in some other cases the opposite seems to be true. In one of the biggest corruption cases of a Turkey-based religious charity association involving Turkish state bureaucrat among the suspects, which shook first Germany (A German judge reported that it was the biggest case Germany had ever seen) and then Turkey, the suspects are being tried without being detained. In a rape case of a 12 year old girl by 20-some men including state employees-gendarme, primary school vice-president, neighborhood authorities, employee from a municipality-, the court lessened the verdict by passing a judgment that the girl consented. A police officer who killed a Nigerian refugee professional soccer player in the police station, got less than 5 years after the court case concluded this December 2011. In another trial of a student who was taken in as a "terrorist" just for wearing a *poşu* (a scarf), some police officers admitted that the police report was fake. In Diyarbakır, infrastructural insufficiencies due to incoming forced migration, disrupted families, lost economies, and many other dynamics initiated by the state's forced migrations is causing a lumpenization of kids. Some of these kids below the age 18 have been sentenced under terror laws to very heavy terms in prison for protesting. Earlier in 2011, the court asked for 24 years each in prison for kids aged between 13-17.

A further loss of credibility for the Turkish judiciary sums up the current situation. Two previous cases which have put the judiciary and public conscience at odds are the Dink trial and the Sivas Massacre trial. Hrant Dink was the editor-in-chief of the only Turkish language Armenian weekly and was assassinated on 19 January 2007, the trial is still going on more than 4 years later. The trial for the 1993 Sivas Massacre, the most clear case of religious violence of the past 2 decades in Turkey is still going on. In 1993, a mob attacked the Madımak Hotel in Sivas where the Pir Sultan Abdal Association (an Alevi Association) was hosting invited writers and poets for a festival. The mob set the hotel on fire, 37 writers and poets were killed. Recently the judiciary has considered via the testimony of a "secret witness" a link between the Sivas Massacre and "PKK terror," and has naturally failed, because there are numerous accounts and visuals on how the event was religious mob violence provoked by local authorities. A documentary screened on the State television channel in 2008 suggested obnoxiously that the 1978 Maraş Masacre of Alevis was an Armenian plot. After right wing provocations pitting Sunnies against Alevis in 1978 in Maraş, many left wing and Alevi citizens, adults as well as children, were massacred by mobs in their homes.

The trajectory of these trials and some of the current mass arrests reveal one of the most prominent discursive building blocks of anti-democratic politics in Turkey; a politics of memory which aims at the Armenification, Kurdification of all violence. This frequent clash between historical consciousness and politics of memory in Turkey has to be taken seriously as the soil which feeds racism.

## 2011 elections:

Democratic elections and violence are mutually exclusive practices. Daily politics in the months before and after the 12 June 2011 elections in Turkey proved to the contrary. The military for once was not part of the pre-election scene, but the police showed that it is up to the task of replacing military violence in Turkey against all kinds of anti-government non-violent social movements. Some examples were: a teacher who had a heart attack after a police gas bomb (mentioned above), another child killed by a police officer in Diyarbakır, many activist and non-activists

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taken from their homes under police custody without the necessity to provide a reason under terror laws, anti-syndicalism propaganda by some imams and gendarmes, a woman's rights activist whose hips were broken by the police, and many other incidents of the like in the context of the approaching elections. And after the elections, persons seriously injured by police raids at the victory celebrations of the independent candidates for parliament, in one case a woman at least past her sixties was beaten up with wood planks and had 120 stitches on her head. Clearly, AKP had entered and exited the elections with the backing of police violence demobilizing through fear in general, and in particular taking into custody under KCK operations all BDP-elected mayors, politicians and activists—qualifying them as the urban wing of the PKK— who were expected to work at the approaching election campaign.

For the past two general elections (2002, 2007) minority parties have been entering the elections with independent candidates and not as political parties. Running as independents offers a higher probability of having representation in parliament, because of the anti-minority electoral system facilitated by the 10 percent threshold. The BDP's success in the last elections was to include candidates from marginalized socialist parties and groups into its independent lists and have 36 independents get into parliament.

Yet the security the 10-percent threshold offered to AKP was apparently not enough and the incident which served as the last drop to spill the water of Turkish politics before the elections was the High Council of Elections (YSK) decision on 19 April 2011 vetoing 12 out of the 61 BDP-supported independent candidates on grounds of having a past "criminal" record. Some independent candidates who got elected in the June elections are still in prison. Following the YSK decision, Prime Minister Erdoğan hailed in his election speech in the city of Muş on 30 April 2011—where in the 2007 general elections an independent candidate had been elected—the motto, "single nation, single patrie, single flag and single state," which he had repeated in December 2007, right after the parliamentary decision to send the Turkish troops across the Iraqi border. After protests against the YSK decision, YSK took the decision back, the police shot a child in Diyarbakır while countering the protests.

These blows on political rights recall to mind the 1987 referendum on the removal of the ban on political rights in the transition period from military regime to democracy. The 1987 referendum on political rights showed no signs of support for democratization in the hotbeds of religious conservatism, all responding in a range of 61.1—71.3 % "no" to political rights" where the nationwide answered 50.2% "yes." Among the top 6 cities saying yes to political rights were Tunceli—Homeland of Kurdish Alevis (78.7%), Mardin—Southeastern City—(67.1%), Hakkari—Southeastern City—(63.4%), Zonguldak—city of miners— (61.9 %). These statistics can make us start thinking about current misconceptions of Turkish politics.

### **A misunderstood constitutional referendum in 2010:**

The institutional context which has facilitated this final surge in the lack of independence of the judiciary is a direct result of its restructuring by the 2010 constitutional referendum. This referendum was rushed without an extended societal deliberation and with a huge "emotional" mobilization by AKP government. The literal shedding of tears by AKP members in parliament for the victims of the 1980 coup aimed to preempt, cover, and oppose concrete societal statements on what it means to dismantle the heritage of a military coup. For instance, a local AKP group opposed the building of the statue of the famous socialist head of the municipality of the town of Fatsa in the 70s, who was tortured under the 1980 military government. Or, as Turkish media reported the invitation of the number one suspect behind the bombings and violence in the 1978 Maraş Massacre of the Alevies to the 2008 Alevi Workshops advertised and launched by the AKP government as further democratization sheds serious doubts on their democratic and pluralist commitments. The recent right wing provocations in December 2010 and 2011 in Maraş, during the commemorations of the 1978 massacre attested one more time to the need for a raised historical consciousness as a precondition of any reform of the 1982 military constitution rather than AKP's gush of emotions at the parliamentary level.

The AKP politics of the 2010 constitutional referendum of trying to substitute a historical consciousness with immediate emotional bonds is most evident in the Party's push of religion as a solution to the Kurdish issue but also as a general tool of social policy and governance.

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The current advocates of the “democratizing AKP thesis” completely miss some of the overlaps between the military heritage in the 1982 constitution and AKP constitutional politics. The 10-percent threshold in elections, required courses on religious culture and morality in public primary and secondary schools (Article 24) and the Directorate of Religious Affairs’ (DRA) explicitly stated goal of contribution to national solidarity and unity (article 136), all are the heritage of the 1980 military rule and were embraced by AKP in the September 12, 2010 constitution amendments. The Government has held tight to required religion courses despite the fact that there is a 2007 national court decision against these courses.

DRA currently has 5 protocols signed with other state institutions concerning social policy and 4 of these were signed under the AKP government. With the Ministry of Justice on religion courses in prisons (30 March 2001), with Social Services and Childcare (26 February 2007) for providing religion personnel to these institutions and to have imams communicate the importance of these institutions to the public, with the Family and Social Research institution (13 March 2008) and with the Health Ministry (14 December 2009) on “mother and child health and reproduction health” and another protocol signed on 12 April 2010 between the state ministry responsible for the DRA and state ministry responsible for women and family. The institution is turning into an octopus violating the differentiation of spheres.

In this context and given the working principles of the Constitution Compromise Commission, Turkey can be heading for yet another constitutional change, but definitely not for a societally-based and well-deliberated democratic constitution writing. The Commission consists of 12 members, 3 members each from Justice and Development Party, Republican Peoples Party, National Action Party, and Peace and Democracy Party, and it is headed by the speaker of the Grand National Assembly (from AKP). According to article 5 of the working principles, it can convene with one member each from three of the four political parties. According to article 7, the commission can decide not to keep records when it sees necessary, and no record is made public till the commission concludes its task of drafting a new constitution. According to article 10, the meetings of the commission are closed to the media, and the commission –through the head of the commission–will make media statements after a meeting as it sees fit. Not only the lack of a democratic context, but the lack of transparency in the drafting and a commission which can convene with only three members casts serious doubts on the possibility of a democratic constitution.

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