

The Key To Constitution Making In Turkey

Written by Sinan Ulgen

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SINAN ULGEN, DEC 21 2011

Turkey's domestic political agenda is set to be dominated in the next few months by the effort to draft a new constitution. Turkey's current constitution dates back to 1982 and was drafted in the wake of the 1980 military coup under heavy military influence. Over time, almost half of its articles were amended with a view to enlarge the scope of liberal freedoms. This time around, a whole new text is to be negotiated.

At the core of the debate are four key issues: a redefinition of the principle of secularism in the Turkish context, a new framework for dealing with minority rights, constitutional checks and balances for limiting executive power and the possible switch to a US style presidential system.

Turkey has been unique in the Islamic world as a strongly secular state that has been able to combine democracy and modernity. Yet the decades long interpretation of the principle of secularism is now being strongly challenged by a newly empowered socially conservative middle class. The ruling AKP party which traces its roots to political Islam is intent on introducing a more flexible interpretation of secularism which would allow for a bigger role for religion in the public sphere. Thus the headscarf ban affecting university attending young girls is to be lifted. The question that will face the Turkish society will be how to redraw the limit between state and religion.

Equally sensitive will be the vision to be embedded in the new Constitution regarding ethnic minorities. The current Constitution defined Turkey as a unitary state and does not recognize the existence of ethnic minorities. The ongoing democratisation of the country, largely as a result of EU linked reforms, has now enabled the aspirations of the minority ethnic groups and in particular the Kurds to be freely voiced and debated. The expected overhaul of the Constitution will therefore need to address this issue of how to ascertain the existence and rights of these minorities in a way to strengthen the country's social cohesion.

The experience of the past decade that has witnessed the ruling AKP aggregating ever more political influence has shown that Turkey is in need of constitutional guarantees to limit the scope of executive power. Being a parliamentary system, the Turkish constitutional order, by definition, allows the legislative to be controlled by the executive. So there are no separation of powers between the legislative and the executive. In addition the judiciary has shown to be open to political influence. Traditionally the role of counterweight to executive power was fulfilled by the military. Now that the civil-military relationship has been normalized and the Turkish military has lost much of its undue political influence, there is an acute need to re-establish the checks and balances according to democratic standards. The new constitution is a real opportunity in this respect. The new text should therefore incorporate provisions to substantially strengthen the independence of the judiciary and ensure a higher degree of protection for press and speech freedoms.

Against this backdrop, the popular Prime Minister Recep Tayyip Erdogan is championing a radical transformation of the constitutional order. He wants to replace the current system of parliamentary democracy by a US type presidential system. In the past, the country's president was selected by the Parliament. A provision introduced as part of the constitutional amendments of 2007 changed this rule. Turkey's next president is now to be elected by popular vote. However when introducing this change, lawmakers failed to upgrade the president's powers. It is no secret that the PM Erdogan is intent on becoming the next president of the country in elections slated for 2014. He is therefore likely to use the constitution making process to shift some key executive powers to the office of the

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presidency. Erdogan's agenda has however failed to garner the support of the opposition parties. He will thus be faced with an unpalatable choice. Getting non-AKP parliamentary support for the constitutional draft will require him to drop any initiatives geared to enhance presidential powers. A more consensus driven process of constitution making will require sacrificing the objective of introducing the presidential system in Turkey.

Yet as in the case for all rising expectations, there is a risk of disillusionment with constitution making. Many of the country's fundamental problems including minority rights, press freedoms and judicial independence are left unaddressed at present. The freshly initiated constitutional process is often given as the justification for delaying policy responses. The constitutional process is slowly but surely becoming a catch all answer to many of the country's ills. The next few months will therefore witness a crucially important debate unfolding in Turkey about a renewed social contract. Turkey's challenge will be to engineer the required popular consensus in an increasingly polarized political atmosphere.

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