

Will Erdoğan force a constitution within the political space he emptied?

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It can already be anticipated that Erdoğan's yet-to-be-publicized draft constitution will serve no other purpose than to consolidate his sole dominance over all state powers and, with a temporary clause to be introduced at the last minute, enable him to run once again in 2028. (Photo: Presidency)

Could the president of Turkey, Recep Tayyip Erdoğan, who failed to crack open the “**once in a century window of opportunity**” before Turkey, be looking to permanently close this window after shattering the opposition, intent on dismantling them, in the 2023 elections, and turn Turkey into an elective autocracy where the elections, too, are unjust?

Was the draft constitution written in 2022 or 2021?

President Erdoğan, on Tuesday, 12th of September 2023, at the opening of the “A Constitution of 2023 instead of 1982” symposium held in the Ulucanlar Prison Museum in Ankara, said, “Last year, we organized a series of workshops attended by scholars and representatives of civil society who had something to contribute about the constitution. Following this [...] we prepared our own draft constitution.”

However, in his speech at the opening of the Grand National Assembly (TBMM) on 1st of October 2023, he contradicted himself, stating, “In 2021, as the People’s Alliance, we first made our preparations for the new constitution. Then, we invited other political parties to make their own preparations and share them with the public. Unfortunately, this sincere invitation of ours went unreciprocated.”

While Erdoğan claimed on the 12th of September that the draft constitution was written “after the 2022 workshops”, he said on 1st of October in the TBMM that it was written “in 2021”. Which of the dates in Mr. Erdoğan’s speeches is true? Is it 2022 true as Mr. Erdoğan said at the Ulucanlar Prison Museum on the 12th of September or is it 2021 as he said at the opening of the TBMM on the 1st of October, 2023? Which statement is true? Which of the dates in his statements is correct? How will those who wrote Mr. Erdoğan’s speeches explain this inconsistency?

It is Erdoğan and the AK Party that deserve criticism, not the opposition

Erdoğan is unjustly criticizing the opposition for “not preparing a **draft constitution**”. In fact, the opposition parties, known as the “Roundtable of Six”, shared their draft constitutions with the public on November 28, 2022, during the “Strengthened Parliamentary System Constitutional Amendment Meeting”.

It is President Erdoğan, on the other hand, who did not reveal the draft written by the presidential bureaucrats in 2021 or even in 2022, and who still has not disclosed it, even as we approach the end of 2023. To speak fairly, the truth is that if there’s anyone with the right to criticize it’s the opposition political parties. The ones deserving criticism are Erdoğan and the AK Party, who have still not revealed their draft to the public.

Politicians are already convicted in the court of public opinion

The public is fed up with politicians rightly or wrongly criticizing each other without cease, alleging that the other has failed to do this or that. This brings no benefit to the people. However, from public’s perspective all politicians deserve a hefty criticism for not seizing the “once in a century window of opportunity” facing Turkey before the 2023 elections.

The oligarchic political elite, which sees politics as a nasty battleground where everything is permissible just to capture and wield state power according to their whims, can’t even unite around the simplest issues to further strengthen the state they wish to capture. They are already convicted in the court of public opinion for prioritizing personal ambition and benefit over propelling Turkey into the ranks of the nations with the most advanced law, democracy, and prosperity.

The missed “once in a century window of opportunity”

A “once in a century window of opportunity” was facing Turkey prior to the 2023 elections, as the ruling party’s proposed enhanced presidential system and the opposition’s strengthened parliamentary system proposals were converging and a reconciliation of the two proposals was a real prospect. Provided that the opposing sides started with agreeing to a fully independent judiciary this window of opportunity could have been seized. I’ve called on

politicians about this opportunity asking them “[please] first, empower the state you wish to capture with an independent judiciary. How and who captures and uses this power can be agreed upon later.”

At the “Economy and Law Gatherings” organized jointly by the then “Dünya”, now “Ekonomi” newspaper and the Better Judiciary Association (BJA), representatives from the business and legal sectors fervently supported my suggestions. They were excited about the potential opening of this opportunity but were sceptical about the possibility of its realization. Unfortunately, they were proven right! Neither the ruling party nor the opposition made a move to open this window of opportunity. Turkey this once in a century opportunity was missed with eyes open in the run-up to the 2023 elections.

Will Erdoğan permanently close the “once in a century window of opportunity”?

The responsibility for missing this once-in-a-century opportunity falls chiefly on Erdoğan, the most powerful amongst politicians. He holds the decisive power to secure a consensus for a civil constitution. He could have negotiated the draft constitution he had bureaucrats draft in 2021 with the “Roundtable of Six”. He could have blended the enhanced presidential system proposal reported by Abdülkadir Selvi in 2021 with the opposition’s strengthened parliamentary system proposal, and reached a consensus that fully liberates the judiciary. However, he did not, and thereby closed the window of opportunity that could have seen Turkey leap into the ranks of the world’s leading nations in law, democracy, and welfare. He squandered this monumental chance for his personal political future.

Erdoğan, had promised “economic, legal, and democratic reform” towards the end of 2020 but quickly abandoned the pledge after only three months. He is, now, preparing, to impose on the nation a draft constitution written in 2021 by state bureaucrats under his command, after securing his candidacy and election as president for a third term, contrary to the Article 101 of the Constitution and the Law 6771 Article 18(b), through an unfair election.

What might Erdoğan’s real intentions be?

It can already be anticipated that Erdoğan’s yet-to-be-publicized draft constitution will serve no other purpose than to consolidate his sole dominance over all state powers and, with a temporary clause to be introduced at the last minute, enable him to run once again in 2028. Journalist Deniz Zeyrek’s perception corroborates.

Erdoğan’s propaganda of eliminating the long since erased traces of the 1982 coup constitution, which he used in 2010 and 2017, is not accurate. Because all the provisions of the 1982 Constitution, made by the coup plotters, regarding the judiciary, executive, legislature, and the president, have already changed; no traces of the coup leaders remain. Promises that freedoms will be the rule and restrictions the exception, and that regulations will be based on international treaties are not at all convincing. If so, then why are decisions by the European Court of Human Rights, established by the Council of Europe Treaty, pertaining to violations of basic rights and freedoms, rejected, and turned into domestic political fodder?

Promises that sound good but in reality give nothing to the public, such as “voters can propose laws” and “the Parliament can dismiss ministers,” are not well-intentioned at all. These are, clearly, propaganda tools that will be fed to the public through the mainstream media under Erdoğan’s grip. They can have no other purpose than to convince his millions of unconditional supporters to accept his fourth presidential candidacy.

Can a constitution be negotiated without a real opposition?

Genghis Khan built the world-renowned Mongol Empire by coming together and sharing power with equals or superior rivals, sharing, and using powers within a customary framework, uniting differences around a common ideal.

Fatih Sultan Mehmet, who ended an era by conquering Istanbul, had independent judges before him he stood as he was no different from his subjects, who could even order his hands severed from his wrists as remedy for a non-Muslim's application for retribution.

The founder of our Republic, Mustafa Kemal Atatürk, won the war of independence with the authority given by the founding parliament. He would listen to those with differing opinions at dinner tables, respected poets who would rebuke him, saying "I'm not your jester," never allowed money to be created without collateral, and protected its value.

In contrast, President Erdoğan has not only eliminated potential rivals, unlike Genghis Khan, and also left no significant opposition to stand in the 2023 elections. Unlike Fatih Sultan Mehmet, judges and prosecutors and salute and stand to attention for Erdoğan. Contrary to Atatürk, Erdoğan has no tolerance for those who think differently or voice harsh criticisms; he has become the leader who has filed the most defamation lawsuits against his people. Institutions that have lost their independence and impartiality employ state data and monetary policies to present Erdoğan as being successful.

More importantly, Erdoğan, utilizing all state resources and controlling mainstream media, including the state-owned Turkish Radio and Television Corporation (TRT), decisively defeated the "Roundtable of Six" and the opposition parties comprising it in the substantially unjust 2023 elections. Nationalists, that had the potential to get a proportion of votes and seats similar to the AK Party's of around 25 percent, were split into three parties. Had the nationalists not been split, the Republican People's Party (CHP), in truth lacking a leader at present, would have lost its title as the main opposition party. The natural candidate to lead it, Ekrem İmamoğlu, can't become the party chairman! As for Kemal Kılıçdaroğlu, who had no power other than that of having handpicked the delegates: he doesn't want to leave the chairman's seat.

Under these circumstances, a significant portion of the public rightfully asks, "In this emptied political arena, with whom and how will Erdoğan negotiate a new constitution, and how will he be able to present a well-prepared, genuinely civil, consensus-based constitution?"

A truly civil constitution is needed for the people

Since the stagnation period of the Ottoman Empire, Turkey has been facing worsening structural problems, some of which the Republic has partially solved. These are: (i) a fully independent judiciary system that offers quality service, (ii) instability, fractures, and drifts in state governance and thereby the economy, (iii) the balance between legislative and executive powers and the judiciary's ability to check the executive, (iv) inclusivity and independence of state-representing institutions, and (v) ensuring justice, rule of law, transparency, accountability, and meritocracy both in state governance and throughout society.

If a civil constitution is truly sought, a solid methodology should be employed, and a civil constitution should be penned with societal reconciliation in which every section of the public can freely express themselves. It would not be right to open nearly all constitutional matters for negotiation at once. No topic should be opened just for the sake of drafting a new constitution. Instead, the most urgent problems and topics should be prioritized and negotiated topic-by-topic. In any case, proposed constitutional amendments should be accepted by a vast majority of society, such as two-thirds.

Translated by Charles Ediz Gün