



CHP PRESIDENT KEMAL KILIÇDAROĞLU'S LETTER EXPLAINING HIS "NO" VOTE

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- ◆ CONSTITUTIONAL RIGHTS SHOULD BALANCE AND RESTRAIN THE GOVERNMENT'S POWERS
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- ◆ FROM THE SOCIETY OF FEAR TOWARD AUTHORITARIANISM
- ◆ I AM CALLING OUR CITIZENS TO VOTE "NO"

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Introduction

Dear readers, recently there has been a change in the leadership and executive council of the Republican People's Party (CHP), the main opposition party in Turkey. Our new leader Mr. Kemal Kılıçdaroğlu has been welcomed with interest by the electorate and the polls show that the vote shares of the party increased significantly. Our most important target is to come into power in the elections to be held next year. In the meantime, in front of us, we have a Constitutional Referendum to be voted on September 12 and as a first step we have started a campaign on the issue.



We have a clearly negative opinion regarding the constitutional change. We think that the Justice and Development Party (AKP) prepared an insufficient, malevolent and deceptive constitutional change and we believe that the Turkish people deserve a constitution which is new, more freedom-based and politically liberal, respectful to human rights and more in conformity with the relevant principles and dispositions in the EU countries.

In this respect, I would like to present to you an article written by our leader Mr. Kemal Kılıçdaroğlu explaining the reasons behind the necessity to say "No" to the constitutional amendment and I am looking forward to meeting you soon.

With my best regards,
Gülsün Bilgehan
Deputy Secretary General in Charge of International Relations

CHP PRESIDENT KEMAL KILIÇDAROĞLU'S LETTER EXPLAINING HIS "NO" VOTE



As a citizen and the Chairman of the Republican People's Party, I want to share with the public my views indicated below on the referendum process in front of us.

My deep concerns relating to the political future of the country form the basis of these views. Our political struggle is for increasing the welfare of our citizens and bringing in the country our democracy to the most advanced level. Why democracy? Because in democracies there is more freedom, wealth and human development. Because in democracies there is less deprivation, oppression and violence. We know that in Turkey there are basic problems that



democracy is confronting. Today, the threats that freedom-based (liberal) democracy is confronting, facing lie at the root of these problems. We know very well the destruction caused to democracy by military interventions against elected civilian governments representing the national will. Having the actions of the army under civilian control constitutes the fundamental condition for a good functioning democracy.

The Number of Civilian Dictatorships in the World is Rising Rapidly

For CHP, while putting undemocratic obstacles to the national will is an unacceptable situation, the government's efforts to create a dictatorship of the majority on the basis of its majority in Parliament and by holding the whole society under coercion constitutes a development of at least equal gravity.

As we all witness, the big threat toward democracy in our country are the government's authoritarian stands and actions which know no limit, do not tolerate the opposition and disregard fundamental freedoms.

The most important lesson that we can draw from the history of contemporary democracy is that ballot boxes constitute an indispensable but insufficient condition. The basic factor strengthening and developing democracy is to place the rule of law and individual rights and liberties on sound foundations. As long as the rights of individuals and minorities are not protected by laws and the power of government not limited through democratic controls, the country will confront the danger of dictatorial oppression by governments claiming to represent the majority. While the number of military regimes has been decreasing, we are observing with concern the rapid rise in the number of civilian dictatorships in the world in the last ten years. In addition to the functioning of a fair electoral system, the development of democracy is also dependent on the rule of law which can survive thanks to the independence of the judiciary and on the protection of individual liberties. Let us never forget that the superiority of democracies lies in the ability to confine the power of the state to the frontiers of the rule of law. I want to examine the constitutional changes from this viewpoint.

Constitutional Rights Should Balance and Restrain Government's Powers

As is very well known to all of us, the Constitution forms the basis of the legal order of the state. It is a societal contract determining the state's structure, its responsibilities, and the limits of its powers in front of society. The Constitution regulates the relations between those in government and those outside it, between the ruler and ruled. In constitutional democracies sovereignty is exercised by the competent organs in accordance with the principles laid by the Constitution. The powers of the legislative, executive and judiciary are determined by the Constitution. The constitutional developments in Europe following the Second World War are based on two main ideas. The first one is to create an independent space remaining outside the state's sphere of intervention for individuals by making fundamental rights and liberties acquire a legal status. Whereas the second one is establishing a judicial system which will guarantee these rights. Both intend confining the power of governments elected by the people. Freedom-based (liberal) democracy is not the unlimited exercise of the will of an elected parliamentary majority. It comprises a comprehensive system of values such as democracy, human rights, pluralism, the rule of law, the independence of the judiciary. One of the basic principles of freedom-based democracies is judicial control over governments.



The Government is Preventing the Citizens from Expressing their Will

The legal control of the judiciary over government is not contrary to democracy and the people's will. On the contrary, it is the principal guarantee of democracy. The judiciary is the guardian of the fundamental values constituting the root of democracy. The judiciary guarantees individual rights and liberties. It ensures that the minority is not oppressed by the majority. The judiciary's legal control over government ensures that those exercising power remain within the limits determined by law, in other words that they don't behave arbitrarily. By accepting control by the judiciary governments display their will to rule the country legitimately within the limits of the law. The changes AKP wants to make in the Constitution show clearly its annoyance with this type of judicial control which is a requirement of the rule of law.



In fact Mr Prime Minister has expressed several times that the decisions taken by the Constitutional Court concerning the laws enacted by the Parliament or the decisions of the Council of State are contrary to the will of the people. The purpose of the package of constitutional change is to create a judiciary dependent on the government. This purpose is hidden in a series of proposals for change some of which can appear positive at first sight. I want to state clearly that CHP supports in principle those liberty enhancing changes contained in the constitutional package; furthermore, finding several of them insufficient it wants them to be taken further.

Unfortunately the constitutional package has been prepared by the Government without seeking a consensus in Parliament or the society. Public consensus is needed for both the permanence of the constitution and the functioning of democracy. Let alone ensuring a consensus, the package of change prepared by the AKP Government has led to the increase in polarisation and tension in the public. The real purpose behind the constitutional changes has also determined the AKP executive's method for the referendum. A package comprising disconnected changes has been prepared and the casting of a single vote at the referendum has been envisaged. The people have been denied the possibility to say "yes" to some clauses and "no" to others. The real danger is that such a referendum prevents the people from expressing its will freely. At this point I would like to draw attention to the report on referenda prepared by the Venice Commission. This report envisages separate voting for each issue in a referendum for constitutional change comprising unrelated issues. I would also like to express my views concerning the clauses relating to the judiciary and which constitute the essence of the constitutional package.

The Objective is to Have a Constitutional Court Dependent on the Government

The independence and neutrality of the Constitutional Court as an organ is closely connected with the appointment of its members. The change package wants to ensure that the majority of the Constitutional Court is composed of members sharing the same view with the government. Some of these members will be selected directly by the President who will



her/himself accede to office through the popular vote while others will be elected by Parliament. This system will cause very serious defects. Above all, the President who is the head of the executive is given a determining role; thereby the influence of the executive over the judiciary is being increased. Additionally, the number of members selected from institutions controlled by the government has been raised. For example, while there is one member from the Council of Higher Education (YÖK) in the present Constitutional Court, this number is being increased to three. While there is one member from the Court of Accounts, this is raised to two. Parliament will elect three members with a simple and not a qualified majority. Thereby, members sharing the same tendency with the government and not independent ones will control the Constitutional Court. A Constitutional Court of this nature cannot be expected to fulfil effectively its function of control over the government. If the AKP Government wanted to make the Constitutional Court acquire a democratic structure and become a high judicial organ functioning independently and with neutrality, it could have proposed a change envisaging the election of the majority of the members of the Constitutional Court by Parliament through qualified majority. There are several such examples in Europe, starting with the German system. In that case achieving a consensus in Parliament on candidates would have become compulsory; instead of political tendencies, above all, characteristics such as knowledge, experience, independence, neutrality would have been sought in candidates.

In Europe the High Council of Judges and Prosecutors (HSYK) is not under Ministerial Control

The changes realised and those omitted concerning the High Council of Judges and Prosecutors (HSYK) which is the key element of judicial independence display as well most clearly the true purpose of the government. In the constitutional package the Minister of Justice continues to be the president of the Council and the Undersecretary remains a member.

This system too will cause important defects. The presidency of the Minister and the membership of the Undersecretary are not compatible with the independence of the High Council of Judges and Prosecutors (HSYK). In Europe there is no country where the Minister is the president of the High Council of Judges and Prosecutors and has powers to control it. Similarly, the membership of both the Minister and the Undersecretary does not exist in any country. In the report prepared by the European Council of Judges for the Council of Ministers of the Council of Europe it is stated that the High Councils of Judges and Prosecutors should not be under the pressure of the parliamentary majority and the executive, that parliament and the executive should not interfere with the election of this council and that its president should be a judge elected by the council itself and not by political parties. Also, in its opinion submitted to the European Council of Judges, the Venice Commission proposes that the council's president should be a person outside political parties and having neutrality. With regard to Turkey, the Report of the Third Consultative Visit prepared by the European Commission recommends that the clause 159 of the Constitution be changed so as to exclude the Minister and the Undersecretary from the council's membership.

The Government's Control over the High Council of Judges and Prosecutors (HSYK) is being strengthened

At present the Minister of Justice possesses large powers which do not allow the High Council of Judges and Prosecutors (HSYK) to operate independently. The change package does not



decrease these powers; on the contrary it increases them. Also, a sentence indicating that the presidency and representation of the High Council of Judges and Prosecutors (HSYK) belongs to the Minister has been added to the Constitution. Moreover the right to appoint the general secretary of the secretariat to be newly created is given to the Minister of Justice. On the other hand, the inspectors have been attached to the council (HSYK) but they will not be able to open an investigation without the approval of the Minister. And a most dangerous clause added to the Constitution is as follows: “The election of the members of the council (HSYK), the constitution of the departments and their division of labour, the duties of the council and of its departments, the quorums needed for meetings and decisions will be determined by law”. If the change package proposed by the Government enters into force, the latter will acquire large powers to make the dispositions it desires regarding the council (HSYK) on the basis of these changes.

Additionally, the powers held by the Minister in accordance with the present Constitution and laws are continuing. The Ministry of Justice possesses the right to change the territorial jurisdiction of tribunals or to propose the abrogation of a tribunal. The right to convoke the council (HSYK), to prepare the agenda belongs to the Ministry of Justice; the council cannot convene if the Undersecretary does not participate to the meeting.



All this shows that the presidency of the Minister of Justice is not symbolic, that the control of the government on the council (HSYK) is being strengthened by increasing its already large powers through new changes.

The Judgement of the Perpetrators of the 12 September Coup is Symbolic

The presidency of the High Council of Judges and Prosecutors (HSYK) is a product of the 1982 Constitution. In fact, in the 1961 Constitution the Minister of Justice was not the president. The Minister could only participate to the meetings without having the right to vote. While claiming that the constitutional changes are made with the aim of getting rid of the 1982 Constitution, the AKP government is at the same time preserving and strengthening those dispositions of this Constitution which suit it and this shows the true purpose of the changes. Therefore AKP’s placement of the constitutional changes on the path of changing the 1982 Constitution constitutes a great deception.

The only clause of the change package related to the 1982 Constitution is the abrogation of the temporary 15th clause. However, in practice this change is bound to remain symbolic as the perpetrators of the 12 September regime cannot be tried because of the expiration of the legal time limit.

The way out of the 12 September regime is to make a new constitution which is based on societal consensus, holistic and consistent. However, AKP’s constitutional package preserves the 1982 Constitution by patching it and makes the 1982 Constitution gain a new vitality. The clauses of the 1982 Constitution bearing the seal of the 12 September regime have been left untouched. For example the preamble constituting the philosophy of the 1982 Constitution has been left intact. The 10 per cent threshold which is a product of the 1982 regime has not changed at all. These examples can be multiplied. On the other hand, in terms of judicial



independence there is a regression to a point which is much further behind than even the 1982 Constitution.

From the Society of Fear toward Authoritarianism

In freedom-based democracies the guarantee of the individual rights and liberties of those ruled is the independent judiciary. Especially after the 2007 General Elections the authoritarian tendencies and actions of the AKP government have gradually become more evident. Illegal telephone tapping, investigations aiming to silence opponents, very long periods of detention of university, media, civil society members, searches conducted in private locations and the sequestration of private objects which have no connection with any criminal act, the financial pressures exercised on companies and media organisations have created a society of fear in Turkey. The actions of the Government have led to an environment of unfair competition and to the impairment of the freedom of enterprise which is an indispensable element of freedom-based democracy. Alongside this, the pressures on the media, the judiciary, civil society organisations, trade unions and the predominance of a concept of government based on majority rather than pluralism has in our country started a process toward authoritarianism using democracy as an instrument. If the change package enters into force and judicial control disappears, Turkey will rapidly be driven toward an authoritarian regime dominated by a single party where government is concentrated in a single hand and eludes any form of constitutional control. In case the constitutional changes enter into force, individual rights and liberties will be denuded of judicial guarantee, the individual will remain unprotected in front of the arbitrary actions of the executive. The constitutional protection ensured by judicial control to individuals will disappear. The judiciary will be unable to play the role of arbitration. Ultimately channels of opposition will be closed, the opposition will be intimidated.



In Turkey democracy is going through a very difficult time. The constitutional changes that the AKP government is trying to make accepted is eliminating the principle of the separation of powers which is one of the most fundamental elements of democracy, by subordinating the judiciary to the power of the executive. The arbitrary government actions visible in every field are rocking the foundations of the rule of law. Judges having professional concerns under the control the government can fear taking decisions which will displease the government. Freedom-based democracy limits the state's power in order to guarantee the rights and liberties of the individual and to guarantee the rule of law. It limits state power to ensure the



freedoms of thought, conscience, organisation and enterprise of the citizens. This is why constitutional rules determining the limits of state power are needed in order to achieve the good functioning of democracy. Individual rights and liberties can only be protected if the separation of powers is guaranteed. This is the only way to overcome the oppression of the majority and a dictatorial regime based on the majority. This is the only way to enhance the power of the citizens living in the country.

The principle of the separation of powers allows the state to control its power from within and to achieve a balance within itself. The intelligent government is the one which wants to be controlled and which takes the relating measures itself. Otherwise governments reach a situation where they only care for their own power and protect only their own interests. Today this is the situation reached by the present Government.



I am Calling our Citizens to vote "No"

In the forthcoming period, curtailing through democratic means of struggle the tendency of dictatorship of the majority stemming from a government concept recognising no bounds to its power will become the foremost objective of democratic organisations and of all our citizens. Therefore, I am calling everyone wholeheartedly wishing that our country reaches the most advanced level of democracy to rise above political squabbling and show also against the tendency of dictatorship of the majority threatening our democracy all the rightful sensitivity they have shown in opposing military tutelage. With all our citizens sharing our concerns we will vote "No" in the referendum.

Kemal Kılıçdaroğlu

Chairman of the CHP

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