



BASIC PRINCIPLES OF HAVING MORE LIBERAL CONSTITUTION IN TURKEY

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Abstract

There are serious works on making more free constitution in Turkey on the way to EU. A strong constitution from political and social aspects is not enough itself to realize "liberal" choice. The preliminary provisions of 1982 Constitution are composed of very long sentences which has the characteristic of being an essential organization constitution not only makes the definition of the state with its institutional and theoretical structure but also describes the limits of an individual and society. They are also like "Introduction to Public Intervention". Accepting of simple majority understanding as the criterion of power, may cause even the minority under simple majority come to the power with the regulations conducted for the election systems as it was in Turkey, besides the majority may dominate over the minority.

Key Words: Constitutional Power, Liberty, Constitutional Economics, Economic Freedom.

TÜRKİYE İÇİN DAHA LİBERAL BİR ANAYASA TERCİHİNİN TEMEL ESASLARI

Özet

AB sürecinde Türkiye'de tartışılan ve üzerinde yazılan en önemli konulardan biri anayasa reformudur. Liberal tercihi yansıtacak anayasa sadece politik ve sosyal yönleri ile değil aynı zamanda ekonomik hükümleri ile birlikte ele alınmalıdır. 1982 Anayasası'nın giriş kısmı son derece uzun cümlelerden oluşmaktadır. Anayasamız sadece devletin yapısını ve şeklini değil, aynı zamanda bireyin ve toplumun sınırlarını da çizmektedir. Daha çok "Müdahaleye Giriş" felsefesiyle ele alınmış hükümler dikkati çekmektedir. Basit çoğunluk esasına dayalı bir model neticesinde siyasal yönetimler azınlık iktidarları üzerinde şekillenmekte ve çoğunluk üzerinde belirleyici kararlar alabilmektedirler.

Anahtar Kelimeler: Anayasal Yetki, Özgürlük, Anayasal İktisat, Ekonomik Özgürlükler.

Making of freer constitution for the Republic of Turkey has appeared as a significant problem prior to the adaptation studies to be commenced with the European Union. As a result of these studies conducted with series constitutional amendments, the Republic of

Turkey has gotten a certain date to start the negotiations from the European Union.

There are various obstacles to make more free constitution in Turkey. The mentioned obstacles regarding this study shall be handled within the perspective of constitutional law and shall be focused on what to be required so as to form more free constitution.

A strong constitution from political and social aspects as it is in Turkey is not enough itself to realize “liberal” choice. The rationality of the relations not only between the state and individual but also freedom ideal is closely related with the running of democratic system and institutional structure of the state, existence of the separation of power and ideological structure of the constitution. Structural characteristics of these factors have paramount importance in terms of successfully running of the system of which the constitution foresees. In order to provide the proposals of the constitutional amendments to be successful, it is beneficial to discuss how to be the mentioned structural characteristics.

1. Constitutional Ideology

Questions about constitutions can never be answered for all societies and states, for all times. Constitutions are designed to solve the problems of the societies under consideration. The need for a constitution itself, and its structure and content, should thus be discussed against the background of the social and political problems facing the society. Since these problems are different, importation of constitutional arrangements should be done, if at all, extremely cautiously. On the other hand, comparative studies are extremely important. There are aspects of the study of human societies, which are indeed ‘universal’ in important ways. These do indicate some implications in terms of immanent and persistent problems and the structural ways to deal with them. This attitude gives credence to enterprises such as universal human rights and to ‘public choice’ models of constitution. These indications, however, are often incomplete and underdetermined. Comparative studies, which stress both similarities and differences among societies, may thus provide a very illuminating source of learning from the experience of others. (Gavison, 2002: 90-91)

Ideological characteristics of some constitutions that are still in force are clear. Ideological constitutions are the reflection of the mentality that foresees the technique of the constitution as social engineering means. In other words, these are mainly the products to transform the society by means of the constitution. Ideological constitutions resemble to religious catechisms rather than the rules of rational procedures of constitutional political process. The clearest example of the ideological constitution is the Mexican Constitution dated 1917 that reflects sympathy to the concept of socialist society target. Similarly, the Portugal Constitution dated 1976, is the constitution depends upon the preservation of socialist ideological preference. When considering the Irish Constitution, it is clearly seen that the Christianity values are mentioned. The constitution of the most of the third world countries, are the text where the political ideals point out the desired world conception besides making the definition of current structure of the regime. For instance, the constitution has transformed to revolutionary manifesto as it was in the former communist countries. Ideological constitutions are generally long and detailed since they are written with the concern of assuring the principles and institutional arrangements which are required to be preserved or reached¹. We can discuss the issue under a couple of titles in terms of the constitutional ideology.

¹ For instance, the Portugal Constitution that is the second longer Constitution in Europe after E.U. Constitution is consisting of 299 provisions. (See, Erdogan, 1996: 39-40)

a) Preliminary Provisions of the Constitution

Preliminary provisions of the constitutions attach importance from the point of view of putting forward the ideology of the constitution. The constitutions are depending on a definite ideology as long as they are written. The constitution without an ideology means that no principle describes constitution and this makes the constitution meaningless.

The preliminary provisions of the 1982 Constitution of the Republic of Turkey are composed of very long sentences and non-functional² conceptions. The 1982 Constitution, which has the characteristic of being an essential organization constitution, not only makes the definition of the state with its institutional and theoretical structure but also describes the limits of an individual and society. Whereas, according to a real social contract, the natural rights of a person³ shall be its own vested rights and also the rights of a person stemming from the social contract shall be assured by the state. These rights are the rights of a person which are transferred from natural living status into social contract. The constitutional rights are given to the people depending on the social contract. However, natural rights have also become constitutional rights as a result of the social contract (Roland, 1991). Introduction of the constitutions put forward the ideology of the constitution with these preliminary provisions. The rights of a person borne from social contract and also its natural rights should consist from the preliminary provisions reflecting the protecting ideal of the state.

The “Preliminary” part of the 1982 Constitution should be shortened and the provisions which are based upon narrow scoped nation-state understanding at the beginning of the 20th century softened a bit more. An “Introduction”, based on a tolerant and neutral state understanding, can be made. In the preliminary provisions of the 1982 Constitution are ideologically characterized by nationalism, etatism, secularism and republicanism. While “Secularism” constitutes the basis of neutral state, especially the understanding of nationalism and etatism is not in harmony with the principle of neutral state. “Republicanism” is a matter of preference. If “Republicanism” is preferred in terms of determining the President, this will definitely be defined in the constitution.

Liberty is also an ideological criterion of the constitution. The constitutions either will support “socialism” or “fascism” by restricting economic and politic freedoms based upon some certain reasons or adopts “democratic” and “liberalistic” system assuring economic and politic freedoms. In this context, “Introduction” of the 1982 Constitution of the Republic of Turkey, entering the 21st century as seventeenth big economic power, should be re-arranged within short and essential structure taking the principle of neutral state understanding, democratic republic system and freedom ideal as basis.

It is beneficial to look through the preliminary provisions of the Constitution of the United States of America, because it is a kind of document of freedom:

“We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America”.

² For example, separation of powers is written in the preliminary provisions of the 1982 Constitution though this separation has no function at all. Legislation and execution powers are confused in practise and judgement power is not dependent from legislation.

³ Such as life, liberty, property, privacy, etc.

The introduction of the above-mentioned constitution, that is a result of a contract made among the American people, is very short and composed of the essential statements. This text has nearly 230 years background with its utmost importance so as to indicate the common life ideal of the individuals and their purpose for gathering under the same roof of a state.

While the preliminary provisions of the Constitution of the United States of America determinate the basic principles of the association (or the state) but the preliminary provisions of the 1982 Constitution of the Republic of Turkey is like "Introduction to Public Intervention".

b) Establishing the Relation with State and Individual

The way of dealing with the individual in the texts of constitutions is of great importance in terms of the constitutional ideology. The bridge, which has to construct between the state and individual, is the "citizenship" relation. As long as the preliminary provisions of the constitutions based upon the understanding of nationalistic state which indicates the nation and constitution, it shall cause the complicated problems owing to the definitions like state of a nation or the nation of a state. State may consist of the individuals from different nations, religions or religious sects although they are all the citizens of that country. Public authority must be over individual, ethnical or religious differences and has to treat them all equally. Therefore, state of the people, who decided to live together, must have a constitution, which was formed with the provisions regarding the unity of those rather than forming a constitution concerning the differences of those.

In addition to these, the relationship between the state and citizen should be focused rather than focusing the relationship between state and nation because the state cannot make people into a nation with the constitution but can give "the right for citizenship". From this point of view, "the citizenship" can be focused in the constitutions rather than "nationship". It is desired that the state should ensure freedom for the people under its sovereignty instead of making people into a certain nation. Freedom is the most natural right of an individual even prior to the existence of a state.

c) The Point of View of Those Writing the Constitution

It is again the individuals making the constitution. Mentality of the individuals writing the constitution by acting on behalf of the society is to define the ideology of the constitution. From this point of view, it is inevitable to use the capability in social sciences such as history, politics, public management, law, economics, public finance and social psychology as the main criteria at the selection process of constitution makers. These people should be familiar with the society and should also act in a free working environment. Those who make the constitution without a free mind, under the pressure would reflect their current situation to the constitution. The only approval authority of the constitution text to be prepared is the society composed of the individuals. State legal personality shall be re-adjudicated as a result of the approval given by the society. In case those who wrote the constitution are in a pre- constitution stage, individualistic point of view shall be effective in the constitution but if they are in a post-constitution stage, etatism shall be effective in the constitution.

Constitution making may, however, be captured by an interest group who uses its current dominance to impose a structure that benefits its interests rather than building a

constitutional order for a broad constituency. Or it may be used to signal respect for rule of law, while power is allocated and enforced outside the constitutional order. Thus, the adoption of a constitution alone does not mean that there is a demand for the particular order that is adopted. The formal constitutional order is of relevance only, if the allocation of rights and responsibilities in the constitution has a significant impact on how rights and responsibilities are allocated and exercised in society. This does not imply that the constitutional order must be a true and complete reflection of the allocation of power in society or vice versa, or that any evidence of power and influence that cannot be traced to the constitution implies irrelevance of the formal constitutional order. Rather, the relevance of the constitution is contingent on its ability to solve major cleavages of the society it governs (Pistor, 2002: 79).

The most significant problem faced by the people, who were being charged to write the Preliminary Draft of 1961 Constitution of Turkey, has been “the matter of providing a neutral public management.” (Özay, 1996: 153). Evaluations of Prof. Dr. Siddik Sami ONAR who participated in the studies concerning the mentioned issues are as follows (Onar, 1996: 191).

The administration must be neutral and should be relieved from the effect of the people and changing political trends in order to provide the continuation, existence and stability as the social institution and the principle of the rule of law should be realized. One of the reasons causing May 27, 1960 revolution is the possession of ruling power by a group, an oligarchy and defeat of its personal desire, interest and passions. The police force had lost its neutrality and started to be used in favour of a group using the political power for their personal interest and possessions rather than the public benefit.

Destructions of the rent-seeking individuals over the public management system prior to the 1961 Constitution had been one of the sensible issues to be focused while forming the ideology of the 1961 Constitution. The same diagnosis had been in question while the 1982 Constitution is being made and the principle of “limiting the people for preserving the state from the people” has been preferred as the way of treatment. Owing to this approach, the reality of assuming the individuals as the main stones of the public administration had been ignored and the state had been considered as exalted legal personality independent from the individuals.

We can compare the constitutions of the Republic of Turkey and the United States of America on taxation authority in terms of the mentality preparing the constitution. Owing to the article added in the US Constitution in 1913, the application of income taxation had been started. According to the article:

“The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among several states and without regard to any census of enumeration.”

As to the article 73 of the 1982 Constitution of the Republic of Turkey:

“Everyone is under obligation to pay taxes according to his financial resources, in order to meet public expenditure”.

As to the approach based upon etatism the individual shall be responsible for the payment, but as to the individualistic approach the state shall be responsible for the collection. What is the result of the choice between these approaches? On the one hand, the Congress is responsible for laying and collecting tax; on the other hand, taxpayers are responsible for paying tax. At one side, the public authority is guilty because of the

tax evasion, shadow economy and undeclared work; at the other side, the public authority hasn't any constitutional task rather than legislation at this process. In a place 60 percent of the population are taxpayers for income; however 10 percent of the population in terms of taxpayer number has not been reached and 80 percent of those are withholding taxes in the other place.

d) Ignoring the Economic System in the Constitution

While the system is being formed among the state and individual in constitutions, political structure is mostly dealt with. Therefore, the constitutions are in the form of "political constitution". Political institutions of the state and its political system to follow are defined in the constitutions. For instance, the whole of the systems such as being member of the parliament, presidency, prime ministry and judgement system are constitutional. Defining the president with a system of which the constitution does not foresee is not possible.

State is available to assure the structure that will maximize the common interests of the people who live together not only to be the nation. Even at the nationalistic state, social welfare ideal, following the acquisitions in the way of democracy and freedom of a nation establishing the state, will take the most important place. As long as the economic welfare is not assured in the society, first the nation will investigate the state then shall find and adopt the alternative systems that will provide economic welfare sacrificing all its acquisitions. Therefore the new established state shall gain its continuation as long as the economic welfare is provided rather than including the democratic participation in the public administration and to establish the state with politic freedom. Otherwise, it is useless to explain virtues of the republic regime to a nation or society achieved the economic welfare under the absolute monarchy.

There are financial rules of all democratic states and rules for limiting the expenses and debt limits, necessity for accountancy procedures, tax exemption and taxation. Some of these rules are constitutional and can be amended within only very difficult period. However, some of them can be amended by the votes of sufficient majority. The values such as neutrality or horizontal justice in taxation are not officially applied but there are "normative" rules that play important role in accordance with the mentioned law. All these rules have appeared for protecting the citizens from the public officials and bad intentions of the other citizens. It also protects us from each other's good intentions.

The most important deficiencies of today's constitutions are not to define economic limits of the state adequately and to ignore the economic structure besides the political structure. Rather than limiting the area of competence of the political authority, limiting the authority with the constitutional provisions regarding to define the rules of the game has been forming the constitutional aspect of the way going to the welfare society. The individuals may feel more free having with a constitution where the politic and economic structure is handled together. It is of great importance for the individuals to limit the political authority at the constitutional level in terms of harming the distribution of income in the society with the interventions on the economy besides the political authority is limited in accordance with the constitution in terms of defining the President. Even in the successfully running economies, it is observed that there is a sharp decrease in the number of the individuals participating in the political system. The numbers of the groups who are trying to capture the state in the interventional systems try to interfere at every point. As a result, political structure runs better as long as there

is no problem in the economic structure. In this context, it is considered as significant step to handle the economic and political system together in the constitutions together to create a welfare society. It should not be forgotten that the economic provisions are at least as important as the political provisions and political institutions should be handled together with the economic institutions at the constitutional level.

2. The Ideal of Rule of Law

The constitutional state, which is a political ideal, has been forming the basis of the modern constitutional framework. The most significant characteristic of the constitutional state is the rules taken as basis instead of adopting lawlessness in the administration. This characteristic is based upon limiting the responsibilities of those working in the public administration.

The constitutional state provides equality between the individual and state in terms of obeying the rules. "Everybody, even the state is equal before the law". This ideal forms the basis of a democratic system.

In the applications of modern democratic state, the areas of competence of the state and its power have excessively enlarged and the important part of this power is discretionary. The main reason of this is the understanding of "unlimited democracy" which mostly repeated nowadays. The unlimitedly enlargement of democratic policy is approved in terms of the ethical aspect. Because it is believed that democratic-collective decision-making processes are automatically producing good results. This process has the potential of the civilian society and individual private areas are gradually restricted within its body. The concept named as "public law imperialism" is actually an indirect explanation disturbing unfortunately less lawyer today.

In the running of a system, taking the rule of law as basis, existence of the following issues is extremely important in terms of reliability of the constitutional system.

a) Separation of Powers

The separation of powers that we may call as "prerequisite" condition of constitutional state means to define the legislation, execution and judgement bodies clearly and obey the mentioned limitations exactly.

John Locke is an English politic intellectual putting the concept of separation of powers into the agenda first in the history of the modern constitution. Locke has stated that there are mainly three forces in the state administration in his book called "*Two Treatises of Government (1661)*" (Locke, 1660). These are legislative, executive and confederative powers. Therefore the legislative and executive powers should separate from each other in order to prevent the monopoly of the power that may cause the misusing of the authority. Because those who have the power to legislate may use the law in favour of their own interests or may be in a tendency not to implement the law for them. Because of this reason, a separate force should be responsible for the task of implementing the rules put forward by the legislation. By this way, Locke disagrees with monarchy that has the legislative and executive powers together.

It is a historical fact that the public authorities are in a tendency to use their power as discretionary. The more important issue rather than limiting these powers is the inspection of public authority. Legislation and execution bodies have established an auto-control

system by means of their own domestic inspection mechanisms. However, the most significant inspection unit of these bodies in terms of their convenience to the law is judicial power. Therefore, the judicial power must be independent like legislative and executive powers. The most important body of the judgement inspection is the Constitutional Court.

The politicians have the authority to spend the taxes paid by the society. This authority was given to them by the Constitutions. The power to make expense on behalf of the society is transferred to them as a result of the election system named as “representative democracy” and voting mechanism. But they may be extravagant without caring about how to spend the mentioned money. So the responsibility for the expenses is on the paper and insufficient inspection causes a system that we may call as “bureaucratic feudalism” within bureaucratic units in time.

Establishment of legislation and execution bodies should be organized as not to relevant with each other depending on the principle of separation of powers. Today, the accepting of the simple majority understanding as the criterion of power, may cause even the minority under simple majority come to the power with the regulations conducted for the election systems as it was in Turkey, besides the majority may dominate over the minority⁴. Two powers may transform into one power in the course of time as a result of the execution body should take the vote of confidence of the legislation body with the simple majority and running of the legislation body in accordance with the principle of simple majority.

The problem is stemming from democratic structuring than democratic legitimacy. We can accept the system and its running bodies as democratic but in case there may appear some results which are not democratic in terms of the running of the system, then the concept of democracy to be discussed. Democracy is undivided with its results. From this point of view, there must be a definite difference between the legislation body and execution body. Especially the application of the principle of simple majority should be entirely reviewed since it damages to the running of this system. For example, according to the Constitution of the United States of America, the proposal of the law increasing the income is certainly prepared and accepted by the House of Representatives. Then, it is discussed by the Senate and accepted and later it is submitted to the approval of the President. In case the President does not approve, the mentioned proposal need to be accepted with 2/3 majority by the House of Representatives in order the proposal to be re-accepted. The Constitutional system foresees the difference between the legislation and execution by this way. Still, it is a fact that the Constitutional Court cancels many financial draft bills approved by the President and accepted in the legislation body. So, judicial inspection is made seriously and provided that all the parliaments accept the mentioned judicial inspection, by this way a financial draft can be legislated and applied.

Although all these systems are operated, it is interesting the existence of people who defend constitutional economics approach in the United States of America and being in favour of further limiting the authorities of the state because of the restrictions on freedom. It can be stated that there is an interesting differences between the understanding of the limits of liberty of Turkish people and U.S.A.’s people. The destruction of broadly empowered public authorities on individual freedom is still misunderstood or not understood by the great

⁴ AKP gained 34 percent of the votes at the 2002 general election but had the 67 percent majority in the Turkish Grand National Assembly. Although ANAP gained less than 50 percent of the votes at the 1983 and 1987 general elections but had the majority in the parliament too.

majority of Turkish voters. By meaning “the state of which its authorities shall be limited” it is tried to be explained to constraint the power of legislation body after the execution body and to enhance the running of judicial power. So, it is the application of the separation of powers making all the powers equal.

The real efficiency of the judicial inspection depends on the independent courts and reliable judges. Independency of the courts should be thought from the aspects of organic and functional. Organic independency means the independent organizational structure of the courts from the legislation and execution and to conduct their own personnel studies themselves. However, the functional independency means that the judges should be independent while fulfilling their studies and making decision as to law and to their own conscience without taking any order and instruction from legislation or execution bodies or any other judicial authorities.

b) Equality Before the Law

The other criterion of reaching the ideal of constitutional state is “equality before the law”. This issue that was expressed as “the equal distance of the state to everybody” beforehand takes part in the 14th article of the *European Convention on Human Rights* and in the 2nd article of *The Universal Declaration of Human Rights*. As a result of the constitutional principle of equality before the law, it is undesirable to make differentiation between the individuals due to their religion, language, race, class, sex, philosophy and belief in terms of application and interpretation of law.

This principle not only prohibits the certain person or a group to be treated differently and therefore gain an advantage but also prevents to have an unfair treatment.

Violation of the principle of equality before the law can be tolerated if it is in favour of the general interest or public benefit. But, public benefit does not mean the benefit of the majority, public authority or treasury. Public benefit means the interest of the whole part of the people in the society.

The principle of “equality in terms of the human honour” depends upon a moral basis of the legal equality. Equality before the law does not mean absolute equality or socio-economic equality. Absolute equality means to consider everybody equal without taking any difference among the people into consideration, and also this means to form a schematic society. Therefore this is unfair. However, socio-economic equality means to equalize people as to their own economic structure, class or income groups. Such kind of understanding is not a common approach but entirely a point of view. This tendency stemmed from the nature of fascism is contrary to the understanding of freedom as well. Equality before the law is an approach necessitates different treatment owing to some rational reasons above these equality understandings.

c) Freedom to Claim Rights

Separation of powers and consolidation of judicial inspection lie in the basis of a more free constitutional system. In case personal rights and liberties are violated by the execution and legislation bodies, those, whose rights or liberties are violated, apply firstly to the violating authority and secondly to the judicial inspection as a result of a significant criterions of a constitutional state.

The proposal of enlarging the ways of constitutional judgement is one of the mostly discussed issues. In case the individuals do not have a right to comment on economic and financial laws during the discussions at the parliament or the representatives do not represent themselves, to extend giving the right of action to them in the Constitutional Court against the violations of their rights and liberties shall be one of the significant improvements in the judicial system. However, in case such kind of right is given, it is inevitable that the individuals should demand to enlarge their rights of action to the Constitutional Court concerning non-economic and financial regulations of them. Therefore, it is necessary to restrict economic and politic liberties of the right of action to the Constitutional Court and to assure the mentioned restriction with the constitutional warranty.

3. Running of Democratic System

The struggle with democratization in Turkey dates back to the period of the Ottoman Administrative Reforms between the years 1839 – 1876. Some of the political scientists take 1946 when first free elections were polled and entered into the multi-parties period as basis as the beginning date of democracy in Turkey. Democracy is not a regime composed of elections. Even we have to differentiate democracy from republic system. Republic is the name of a political system of which the President came into power with election. Saddam Hussein in Iraq and Colonel Muammer Kaddafi in Libya introduce themselves as the elected leaders, and also these countries accept themselves as a republic. Republic does not mean democracy. Democracy is the name of a regime that assures the basic personal rights and liberties for the individuals whose have right to determine their administration and their common future. Acting from these statements we can consider Turkey as a republic but cannot consider Turkey as a country where real democracy is effective. (Aktan, 1999: 142-144)

The individuals in a democratic system choose the people, who will be charged in a politic system, with their free mind. According to the article 3 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Paris on March 20, 1952:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

The mentioned contract that foresees the basis of a representative democratic system depending on free elections has also underlined the people should have the right to express their opinions freely. The way of this freedom is depending upon the organization of the society. It should not be forgotten that although democratic system is such a system that everybody can express his or her opinions freely, there is a risk for demagogy as well⁵. Therefore, considering the organized society as the guarantee of democracy, a liberal environment is required to be created which will help the people to get organized (McKenzie, 1988: 1-19). As long as rent-seeking groups reach to a free environment where they will strike a balance within the scope of their own interests, there will be no need for regulations of state in many fields and the state shall only

⁵ Aristotle said that democracy is good but has always a risk to turn demagogy. So, Aristocracy is a better regime for society (Yereli, 2003: 14).

assure liberalism⁶. That is to say, the state shall fulfil its natural functions that rent-seeking groups, who are totally in an agreement among themselves, will not to restrict the freedom of the other rent-seeking groups or individuals.

The reflection of the mentioned issue on a democratic system is to have the right to express of everybody in the legislation body by means of an election system that will help to establish a parliament where all the opinions or interests are represented.

The reflection of this system on the market appears as “conscious of consumer”. While producers are acting with the aim of “profit maximization” they have to take the preferences of consumers into consideration. Any producer does not care of the preferences of the consumers cannot survive in the market economy, because individuals want to increase their level of satisfaction by consuming. This is the main problem of economy. So, this is the issue of meeting the requirements at the highest level. The consumers shall incline towards the combination of goods and services which they will get the highest satisfaction and direct the market. So, the consumers shall look for the way to produce the product of good quality and cheaper.

While the law regime concerning the preservation of the consumer rights is adopted in the wealthy states, preservation of the producers is essential in the interventionist economies. Considering that everybody in the society is both producer and consumer and the main issue of economics is personnel needs, the consumer rights shall be predominant. Producing of good quality is an obligation for producers but consumption of good quality is the right of consumers. So, the law system in the developed countries gets preferred in favour of the consumer. Therefore, a democratic structure can be established in the running of the market economy. Consumers can direct the producers by organizing themselves.

Voters in the democratic system and consumers in the economic system are the groups that consist of the persons who want to increase their individual interests, and their freedom to organize should not be restricted. No matter whether they are elected or not, policy makers in the politic system are at the same level with the producers in the economic system and their primary aim is to increase their own interest by providing the electors or consumers should vote for themselves. All of the producers or politicians are elector and consumer at the same time. If the constitutional system is arranged to define the basis of the good quality of policy and production, both the electors and consumers can increase their interests and therefore all the society shall gain benefit of this.

A contemporary civilian society cannot be reached by ignoring consumer dominance in which includes market mechanism (social election = vote box) and elector dominance (Akalm, 1995: 71-75). The way how to reach the success goes from the structuring of the rent-seeking groups or in other words the organized consumers and organized electors.

4. Conclusion

Societies have struggled against absolute and comprehensive authorities of those who rule on themselves along the history. This struggle conducted on the mountains, in the villages and at the palaces has gained a legal dimension today and moved to the

⁶ See for a paper which argued the distribution of rents between parliamentary and non-parliamentary democratic systems, Diermier & Feddersen, 1998: 665-672.

parliaments. "Liberty" that is a basic ideal of human history is one of the significant virtues of 21st Century. The individuals, in many industrialized country, mainly in the United States of America, have recognized the damage that is created by public activities and acted to restrict the power of state. The individuals of the third world nations who demand more liberty have interrupted globalization carried out by the industrialized countries.

It is not possible for Turkey not to be effected from the developments in the world. Recently increasing constitutional amendment demands are the best indicator of this. In order to form a more liberal constitution, studies in the parliament have been continuing while the amendments regarding economic and financial provisions are not even mentioned. The Constitution of the Republic of Turkey should be reformed in conformity with today's conditions and universal liberalism ideal of which the persons are already deserved. Structure of the relations established with state and individual should be dealt with again as to the citizenship criterion. Bureaucracy should gain its prestige again and its running should be ready for the innovations. The excessive intervention powers surrounding the state and also the excessive public institution and foundations should be redefined and state should be recreated again as it is in the history of humanity and the personal liberties should be clearly assured in the constitutional system.

The constitutional amendments made in 2001, are extremely important so as to indicate the changes and transformation carried out in the Republic of Turkey. Although the basic motivating factor of the mentioned amendments is international society (especially E.U.), it is an inevitable fact that politic authority will not display resistance against the demand of being welfare society of the individuals.

The amendments, which were made, are rehearsal of the amendments will be made. Individuals who want to be further liberal economically want to change the Constitution that is the legal basis of the public interventions of which they consider it as the most serious threat against their freedoms.

It is difficult to differentiate political and economic freedoms. The concept of "public benefit" has become most important at the stage of restricting both economic and politic freedoms. Hence, the borders of what to be expressed about "public benefit" should be defined at the beginning. According to this, the public benefit should be the most important concept while taking the following issues into consideration:

- Establishing a more perfect better unity,
- Establishing a more justly and impartial public administration,
- Establishing a common defence system against outer and inner threats,
- Transmission the ideal of liberalism to all generations as a honourable member of international society,
- Preservation of the independency of the Republic of Turkey.

In case one of these targets are threatened means the threat for all. In such case, because all the freedoms are in threat, public benefit shall be considered and people shall act more comfortable.

The law numbered 4709 with its 36 articles and provisional article accepted on October 3, 2001, has amended 1982 Constitution not only considering its articles but also considering its point of view to the rights and freedoms and tried to deal with the basic

ideology of 1982 Constitution in favour of the individuals by providing legal base for the following amendments to be made. The mentioned amendments and the period bring Turkey to XXI. Century conducted by Turkish Grand National Assembly is an important historical responsibility for the members of the parliament using their vote of acceptance but it is also very derogatory for the people living in Anatolia since these amendments are the obligatory result of a policy aiming at the European Union. The way going to the liberalism should be passed through by the legislation body which is free and having the authority to use its power not as a result of the international constraints but the demand of Turkish people, and the individuals became conscious of being a society will be highly proud of this process. Otherwise, the political authorities and legislation bodies conveying the political and economic rights and freedoms of their individuals to the international standards as a result of international pressures shall loose their prestiges in the presence of their individuals. The general elections in 2002 had proved this process and the coalition parties amended the constitution in 2001 were not successful and none of their candidates were elected though the great majority of the voters were in the favour of 2001 amendments.

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