



Social Policies, Gender Identity and
Sexual Orientation Studies Association

Views on the New Constitution Making Process and the Content of the New Constitution of Turkey

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The Social Policies, Gender Identity and Sexual Orientation Studies Association (SPoD) was founded in 2011 in order to provide information concerning the problems of LGBT (lesbian, gay, bisexual and trans) individuals in relation to their human rights with a special focus on their social and economic rights with the aim of contributing to policy-making processes related to these issues. The Association has wide range of activities covering the following areas: access to justice, political representation, prevention of discrimination, knowledge production and, social and economic rights.

1- The new constitution shall be inclusive towards LGBT citizens of Turkey

The new constitution shall provide protection for all citizens against all forms of discrimination. LGBT individuals often face discrimination in all aspects of their lives. However, they lack sufficient public and legal tools to fight against these discriminatory practices.

Constitutional guarantees is of vital importance for LGBT individuals in order for them to be able to struggle against gender identity and sexual orientation based discrimination and denial of their rights including the right to live.

2- The new constitution shall be based upon international human rights principles

Today, discrimination based on gender identity and sexual orientation has become an important category of international human rights law along with other types of discriminations such as disability, sex, religion, belief, ethnic orientation, political view and mother tongue.

The Amsterdam Treaty of 1999, European Council Directive 2000/78, Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity and the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention 2011) that Turkey was the first signatory, constitute together concrete indicators of this

recognition at the level of international human rights law.

Discrimination based on sexual orientation and gender identity has been recognized as a violation of human rights by the European Union member states, North American and most Latin American countries. These countries adopted serious measures both at the constitutional level and at the level of different legal documents with the objective of combating discrimination based on gender identity and sexual orientation.

Countries including Argentina, Belgium, Canada, Iceland, Holland, Norway, Sweden, Republic of South Africa and Spain recognized their LGBT citizens as fully equal citizens and started to take important steps in providing them with the same rights and freedoms as the rest of the society enjoys.

3- The new constitution shall be based on realities, not on prejudices

Renowned authorities of modern medicine, psychiatry and psychology clearly declare that homosexuality is no longer considered as a disease. The American Psychiatric Union removed homosexuality from its Mental Disorders Diagnoses Handbook in 1973. The American Psychology Union followed this decision in 1975. The World Health Organization removed homosexuality from its International Classification of Diseases in 1990. The People's Republic of China removed homosexuality from its National Classification of Mental Disorders in 2001. The continued misconception in our country about homosexuality being a disease is ungrounded and based purely on misinformation and prejudices.

4- All sections of society shall be included in the new constitution making process

The new constitution drafting process shall be organized in accordance with the principles of due timing, inclusiveness and transparency. All civil society organizations that take part in this process shall be provided a justified feedback regarding how and to what extent their views are taken into account during the drafting of the new constitution.

The process shall be open to the participation of all political parties, civil society organizations, unions, universities, professional bodies and citizens. In order for the new constitution to have social legitimacy and realize its civil democratic character as it was promised by the current government, participation of all citizens, individual or organized, is of vital importance. LGBT individuals and organizations have to be included in the process as partners on equal footing with other civil society organizations.

Although the size of minority groups shall not undermine the legitimacy of their rights and freedoms, we would like to remind that the size of the LGBT population, contrary to popular belief, is far from being small. A study conducted by the São Paulo University in 10 large cities of Brazil in 2009, showed that 7.8% of the male population identified themselves as gay and 2.6% as bisexual. The same study showed that 4.9% of the female population identified themselves as gay and 1.4% as bisexual. According to the results of this study, 10.4% of the male population and 6.3% of the female population in 10 large cities of Brazil consider themselves as homosexual. According to the results of a study conducted in 10 large cities of the United States of America by the Faculty of Law of the University of California at Los Angeles, LGBT population constitutes 6% of New York's, 6.8% of San Diego's and 12.8% of Atlanta's total populations.

Although demographic information for LGBT individuals is not available for Turkey so far, these figures might give a rough idea about the size of LGBT population living in the large cities of Turkey.

5- All legal and administrative obstacles against the full participation of citizens in the new constitution making process and against the full realization of freedom of expression shall be eliminated as soon as possible

Establishment of a legal framework enabling citizens' free, courageous and equal participation to the new constitution making process is vital. Legal measures shall be taken to ensure that none of the views expressed during the new constitution making process would be subject to judicial proceedings. Already existing provisions posing an obstacle against the full participation of citizens in new constitution making process and against the full realization of freedom of expression shall be eliminated as soon as possible. The mere fact that these obstacles do exist might result in citizens and/or organizations fear from expressing their views with respect to the new constitution making process and the content of the new constitution. Unless these measures are taken, it would be difficult for new constitution makers to claim that the new constitution relies on a wider social consensus.

6- The new constitution shall be based upon individual rights and freedoms

The new constitution, rather than prioritizing the government, the nation or the family at the expense of individuals, shall protect individual rights and freedoms. The new constitution shall adopt all categories of rights secured by international human rights treaties. The new constitution shall be based on legal guarantees protecting the rights and freedoms of individuals. Different from 1980 Constitution, limitations of these rights and freedoms in the new constitution shall be exceptional and these exceptions shall be drafted clearly without leaving room for abuse. The new constitution shall openly declare that no limitations or restrictions of individual rights and freedoms can have the potential to undermine the fundamentals of rights and freedoms of any social group. Even in state of emergency, limitations of individual rights and freedoms shall be in compliance with international human rights principles. The new constitution shall also openly declare that fundamental rights and freedoms cannot be subject to any kind of negotiation and that they cannot be restricted through majoritarian methods such as referendum.

7- The new constitution shall protect the fundamental characteristics (democratic, secular, social and constitutional) of the state, however all these characteristics shall be realized in accordance with their universal definitions

SPoD believes that the new constitution shall pave the way to the realization of the true democratic, secular, social and constitutional characteristics of the state, in accordance with the universal definitions of these concepts. The democratic character of the state shall be clarified in reference to the principles of constitutional democracy. The secular character of the state shall be clarified by openly declaring that the state shall treat all believers and non-believers equally. The social character of the state shall be defined

in reference to the state's responsibility to protect workers and the unpropertied.

8- The new constitution shall aim at full realization of gender equality

The new constitution shall recognize women and LGBT individuals as equal citizens of Turkey, without institutionalizing both explicit and implicit forms of patriarchy. The new constitution shall ensure full and equal participation of women in all political decision-making processes. The new constitution shall assign responsibility to the state of eliminating all forms of inequalities between men and women. The new constitution shall enable the enactment of affirmative action measures, which shall clearly aim at eliminating the inequalities between men and women; heterosexuals and LGBT individuals; the able-bodied and the disabled rather than exacerbating the already-existing inequalities in the name of "celebrating in-born differences" between these groups.

9- The new constitution shall guarantee social rights of individuals

The new constitution shall recognize the social characteristic of the state and declare the state's responsibilities towards its citizens in the domain of social rights. Social rights shall clearly be defined in detail that covers right to shelter, right to education, right to income (including minimum wage, retirement, minimum income support), right to healthcare services, right to social services, right to transportation, the right to live in an ecologically balanced environment. The new constitution shall state that individuals, rather than (legally recognized) families, shall be the bearers of social rights.

All social policies shall be designed in a manner that will apply to all citizens on equal basis without any form of discrimination.

10- The new constitution shall clearly include "sexual orientation" and "gender identity" phrases in articles concerning equality

The new constitution shall include "sexual orientation" and "gender identity" in articles concerning equality amongst other types of discrimination categories like gender, ethnic identity, religion and belief, political view, mother tongue, disability, marital status and age. This is a shared demand of all LGBT organizations in Turkey in the new constitution making process. We firmly believe that integration of these two phrases into the new constitution will contribute greatly to the elimination of discriminatory legal implementations and administrative practices against LGBT individuals in Turkey.

11- The new constitution shall not include articles referring to vague expressions such as "public morality"

The new constitution shall not include articles referring to abstract concepts such as "public morality", "customs" and "public order" that could be potentially interpreted as to restrict fundamental rights and freedoms of individuals. Indeed, these expressions have been frequently interpreted as to justify discrimination against women and LGBT individuals. For example, these concepts were used as the basis

of legal actions aiming at the closure of LGBT organizations in the past.

12- The New Constitution shall guarantee the right to privacy

In order to give the new constitution a citizen-based character rather than a state-centric one, the protection of right to privacy in the new constitution is of cardinal importance.

In line with the principle of no individual shall be forced to express their sexual orientation and/or gender identity against their own will, the new constitution shall include a strong article that guarantees citizens' right to privacy. This article shall include the domains of communication and housing.

13- Independent National Human Rights Institution shall be founded as an autonomous constitutional institution

Independent Human Rights Institution shall be established by the new constitution. Its sphere of responsibility shall include discrimination based on sexual orientation and gender identity. Non-governmental human rights organizations including the LGBT associations shall actively take part in the establishment, governance and auditing of such an institution.

14- The new constitution shall not disregard the rights and freedoms of asylum seekers, refugees and immigrants

Like citizens; asylum seekers, refugees and immigrants shall also be stakeholders of the new constitution making process that has to be established upon general consensus of all individuals residing within the territories of Turkey. Rights and freedoms of asylum seekers, refugees and immigrants shall be guaranteed at the level of constitution. The new constitution shall clearly declare that refugees and immigrants will be treated on equal basis and will not be subjected to any kind of discrimination.

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