



THE PROPOSED ARTICLE
FOR THE NEW CONSTITUTION:

THE RIGHT TO TAKE PART IN, ACCESS TO AND
CONTRIBUTE TO CULTURAL LIFE

MARCH 2012

This policy document has been drafted in scope of Istanbul Foundation for Culture and Arts' cultural policy studies. Please reference the source when directly or indirectly citing the text.

For detailed information:

http://www.iksv.org/en/aboutus/cultural_policy

THE PROPOSED ARTICLE AND JUSTIFICATION FOR THE NEW CONSTITUTION

The Proposed Equality Principle to be included in the Article that regulates Equality Before the Law of the New Constitution which corresponds to Article 10 of the existing Constitution:

The State will take all necessary precautions to prevent discrimination based on cultural identity and advocacy of all kinds of national, cultural or religious hatred that may stem from provocation of discrimination, hostility or violence. To that end, the State will implement public campaigns through schools, the media and alike, to ensure the eradication of all kinds of prejudices based on cultural identities of individuals and communities.

The proposed Draft Article to be included in the New Constitution:

The Right to Take Part in, Access to and Contribute to Cultural Life

Everyone has the right to take part in, access to and contribute in cultural life. The term “cultural life” refers to language, oral and written literature, music and songs, and other fields of art, non-verbal communication, religion or belief systems, rites and ceremonies, sports and games, methods of production or technology, natural and man-made environments, food, clothing and shelter, and customs and traditions, within the context of ways of life through which individuals or groups of individuals build their world view.

The State will refrain from directly or indirectly impeding the right of individuals or groups of individuals to take part in, access to and contribute to cultural life. The State will take all necessary legal, administrative, judicial and budgetary measures for the full realisation of this right as well as to prevent third parties to impede its full realisation.

The State will ensure and promote the availability of cultural products and services within the scope of cultural democracy values. The State will secure and support their widespread physical and economical accessibility, their appropriateness and adaptability to the cultural diversity of the society and their acceptability by the constituents of various cultural identities.

Any limitations to this right should be considered if and only if they are strictly necessary for the promotion of general welfare of a democratic society.

Justification:

The proposed article to the new Constitution entitled “The Right to Take Part in, Access to and Contribute to Cultural Life” is based on the General Comment number 21 which was adopted at the 43rd session of the UN Committee of Economic, Social and Cultural Rights on November 2-20, 2009, within the framework of article 15 of the International Covenant on Economic, Social and Cultural Rights, of which the Committee is the regulatory body.

Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent. The full promotion of and respect for cultural rights is essential for the

maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.

There are three main interrelated components of the right to participate or take part in cultural life: *participation in, access to, and contribution to cultural life.*

Participation covers in particular the right of the individual — alone, or in association with others or as a community — to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, and to engage in one's own cultural practices.

Access covers in particular the right of everyone — alone, in association with others or as a community — to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity. Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities.

Contribution to cultural life refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. This is supported by the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights.

Ensuring the right to take part in cultural life entails the State to refrain interfering with the enjoyment of the right while taking positive actions to ensure and protect access to cultural products, the prerequisites of supporting and improving cultural life and participation in cultural life.

The State respects individuals' cultural identities and their choice to identify or not with a community. The State recognises individuals' freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information, including art forms. The scope of this freedom also includes individuals' right to have access to their own cultural heritage and practices and to that of others.

The State protects, improves and enriches cultural heritage with all its diversity, transmits it to future generations and promotes creativity. To that end, the State undertakes the care, preservation and restoration of historical sites, monuments, works of art and literary works and protects the cultural heritage of all groups of individuals or communities particularly that of the most disadvantaged and marginalised individuals and groups, by means of policies and programmes designed for economic and cultural development.

The State provides the fundamental groundwork for the implementation of policies to protect and promote cultural diversity and takes all necessary measures for the development and support of the cultural infrastructure. For this purpose the State facilitates access to a rich and diversified range of cultural expressions and takes all measures aimed at enhancing diversity and ensures individuals of

various cultural communities to realise their cultural practices freely, through public broadcasting in regional and minority languages.

The State encourages cultural minorities to exercise their right of association for the development and protection of their cultural rights. To that end, the State grants all kinds of assistance, financial or other, to artists, public and private organisations, including science academies, cultural associations, trade unions and other individuals or institutions engaged in scientific and creative activities. The State encourages scientists, artists and others to take part in international scientific and cultural research activities, such as symposiums, conferences, seminars and workshops.

The third paragraph of the proposed draft features some imperative principles while regulating the right to take part in, access to and contribute to cultural life. These are *accessibility*, *appropriateness*, *adaptability* and *acceptability*.

Accessibility consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination. It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person's choice, and the access of communities to means of expressions and dissemination.

Appropriateness refers to the realisation of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples.

Adaptability refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities.

Acceptability entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them.