

Summary: Turkey's Constitutional Court decision not to ban the AK Party, in spite of ten members being convinced that they were indeed guilty of some political wrongdoing, means that Turkey's political problems and its struggles for power will now have to be settled in the political realm, by the ballot box and not by extra-political means. In its own peculiar way, Turkey is clearing its own path toward becoming a better democracy and the thorny issue of Turkish secularism will need to be settled through political bargains and processes rather than judicial fiat.

The Court Blinks

by Soli Ozel*

ISTANBUL — The political turbulence in Turkey is relentless. At times, it is difficult to make sense of developments because the pace of events leaves almost no time for clarity of thought and reflective analysis. Yet in its own peculiar way Turkey is clearing its own path toward becoming a better democracy.

There is of course a lot more ground to be covered to make Turkey a bona fide democracy where the rule of law abides. Most political actors share the same authoritarian habits of thinking regardless of their side and the lack of trust between rival camps particularly on the definition and application of secularism is phenomenal. To overcome these difficulties the country needs all the ingenuity it can muster and the support of its allies.

The verdict of Turkey's Constitutional Court on the matter of the ruling Justice and Development Party's (AKP) anti-secular activities ought to be understood in this context. The Court decided not to ban the party in spite of the conviction of ten members that the AKP was indeed engaged in such activities; in fact they agreed with the prosecutor that the AKP was at the center of these.

The court did not reach the requisite majority to ban the party (seven votes were needed, six were cast) and instead cut by half the funding the AKP receives from the Treasury. In a sense the Court put the AKP on probation. As the Court's Chief Justice, Haşim Kılıç, noted in his press conference, the court assumed that the "implicated party would draw the necessary conclusions from this."

In Turkey's politics, the judiciary is as much a political actor as it is the dispenser of justice. It considers itself, along with the military, the custodian of Turkey's secular order and the protector of the state's interests whether these be related to economic matters such as privatization or minority rights. Lately, the Constitutional Court itself made political history, and hurt its own credibility, with at least two of its unconventional rulings. First, the Court decided last year that a quorum of 367 was needed to even have a vote to elect the President in the Parliament. This was how it blocked the election of Abdullah Gül to the Presidency in the Spring of 2007 (Gül went on to become president following the AKP's landslide victory in the election).

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Second, the Court declared null and void two constitutional amendments passed by 411 members of Parliament (out of 550) from three political parties although its authority was limited to reviewing such legislation only on procedural grounds. The court decreed that the changes threatened the principle of secularism and contradicted the unchangeable articles of the constitution. The amendments related to the wearing of the headscarf in universities by conservative/pious students.

In light of these precedents most Turks had no doubts that the case against the AKP was inspired by political considerations. The indictment was thin on legal arguments and the case was built on individual statements, anecdotes, the prosecutor's understanding of international relations and inferences. Furthermore, the real aim of the case appeared to be the banning of Prime Minister Recep Tayyip Erdoğan, the most popular politician in the country, from politics and thereby breaking the electoral appeal of AKP or its successor.

The Court and the justices came under vicious attacks from many sides. They were put in the unenviable position of becoming the final arbiter of Turkey's politics and the ultimate custodian of its secularism. The court was thus burdened with the task of blocking a steamrolling AKP that Turkey's other political parties were unable to contain or balance. But this level of politicizing of the judiciary in general and the Constitutional Court in particular risked deepening Turkey's already critical systemic crisis.

Ultimately the Court did not assume this burden partially to preserve the integrity of the institution. It also took the domestic and international context of its decision into account. Fierce opposition within the country to the case in general, outright reprimand from the European Union and belated yet consistent probing from Washington all played their part in determining the outcome. The Court thus acknowledged the supremacy of the ballot box in a democratic order and refrained from jeopardizing Turkey's relations with its Western democratic allies.

The Court's multifaceted and multitargeted decision should be considered a significant gain for Turkish democracy. The thorny issue of Turkish secularism, the proper balance between democracy, secularism, religious beliefs and life-

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styles will need to be reached at the end of political bargains and processes rather than judicial fiat. The culture wars between the secular camp and the conservative camp should also be analyzed in terms of the redistribution of power in the Turkish political system.

(This dichotomous approach is also an oversimplification that the international press had adapted all too easily. Not all secular Turks are part of a staunchly defensive entrenched elite that prefer authoritarian rule to democracy. There are many democrats in the country who are genuinely, even if exaggeratedly, concerned about the undermining of the secular order. Many of those supported the AKP in its fights against the military and the judiciary and in return expect the party to be more sensitive to their concerns and demonstrate its commitment to liberal democratic principles. And needless to say not all conservative, Islamically oriented constituencies are democrats at heart. The confusion stems partially from the fact that as the representative of new elites and migrating masses in metropolitan centers the AKP is a democratizing force in Turkey's politics to the extent that it contributes to the opening of the political space to hitherto excluded classes and redistributes economic and political power. This does not automatically translate into a commitment to democratic principles, behavior or mind-set by the party or its executives though.)

In the wake of the Court's ruling that aborted a potentially severe systemic crisis, the Turkish society and its elected representatives will need to engage in a dialogue to build a consensus to reshape Turkey's political and administrative structures. The many crises the country currently experiences are actually signs of painful, traumatic changes.

The first responsibility lies with the ruling party. Prime Minister Erdoğan, in retrospect, brilliantly played his hand



Analysis

in the court case. He has come out of the proceedings victorious, if not fully vindicated.

A good place to start would be a cabinet revision. Almost none of the centrist, liberal deputies who were recruited for the election last year made it to the cabinet. The Prime Minister's inner circle as well is too restricted in terms of its political views. More importantly, over the past year, the AKP lost much of its status as the engine of democratization in Turkey. It did not behave as a party that put the rule of law, individual rights, freedom of expression, minority rights, economic justice, and the fight against corruption above all else. To remedy this, the AKP could and should engage in drafting a new constitution and make sure that this time around the effort welcomes the participation of many constituencies.

The single most potent sign that the increasing civilianization of the Turkish polity and the retreat of statist elites can be converted into full-scale democratization will be an energetic reengagement with the European Union. It is true that the European Union or more correctly, some of its members, go out of its way to alienate the Turkish public and behave unacceptably. Still, the goal is a historical one. Prime Minister Erdoğan reiterated a commitment to reform and a zeal for EU membership immediately after the Court's decision. With the threat of closure out of the way, the opposition in disarray, and putschists of all colors under custody awaiting trial, the prime minister and his party have no excuse to stall.

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