

What is happening in Turkey?

Party Closure and Beyond

CEPS Commentary/22 May 2008

Senem Aydın Düzgit*

The current political uncertainty in Turkey dates back further than the closure case opened against the ruling Justice and Development Party (AKP) on 14 March 2008. After the contested election of Gül to the Presidency, the elections held in July 2007 led to an unexpected 47% victory for the AKP, resulting in a single-party AKP government. The dispute over Gül's presidency soon cooled down thanks to the conciliatory and flexible image he portrayed in his new post. Prime Minister Erdoğan also contributed to the easing of tensions through a post-election speech in which he declared that during his second-term he would be respectful of the concerns of all segments of Turkish society, and not just of those who voted for his party. The party soon started preparations on the drafting of a new 'civilian' constitution with expanded individual rights and freedoms. Although the drafting process was heavily criticised on the grounds that it was secretive, with little discussion and input from civil society, it could still be considered as a positive step towards further democratisation, given the primacy accorded to the state over society in the 1982 constitution.

The constitution project was nevertheless put on hold in early 2008 and followed by the proposal from the Nationalist Action Party (MHP) to lift the ban on the wearing of the headscarf in universities by a constitutional amendment. The AKP immediately joined this much disputed MHP-led initiative, with the result that the amendment was later taken to the Constitutional Court by the staunchly secularist Republican People's Party (CHP). The lifting of the headscarf ban in higher education could indeed be considered as a positive and necessary step, had it not been separated from the broader issue of constitutional reform, suggesting that some freedoms were being ranked above others. This initiative led to severe tensions on the political scene and added to the worries of certain segments that the AKP was gradually Islamising Turkish society. Reports were widespread in the media that daily life was increasingly being regulated by Islamic practices with the encouragement of party authorities, to the extent that individual liberties were being curtailed.

Little was done by the AKP to ease these growing tensions. Prime Minister Erdoğan even aggravated concerns by some of his statements, such as the one delivered for the 1 March Women's Day celebration in which he called upon Turkish women to give birth to at least three children. At the same time, the government also clamped down on a neo-nationalist gang named "Ergenekon", accused of engaging in plans to stage a violent uprising against the government. The investigation led to some strong opponents of the AKP being taken into custody, among them a prominent journalist, which raised concerns that the government was using this investigation to suppress opposition forces. This period of political unrest reached its peak with the closure case against the AKP, filed by the Chief Prosecutor of the Court of Appeals at the

* Associate Research Fellow, CEPS.

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Constitutional Court. The claim, which rested on the argument that “the AKP had become the centre for activities against secularism”, was accepted unanimously by the Court. In response to the case, the AKP submitted its first defence on 30 April, arguing that the case was political in nature and that it should not have been opened in the first place. The court case is expected to last at least until July 2008 and may not even be completed before the local elections in March 2009.

The closure case can be interpreted partly as the judicial means through which the statist and secularist establishment wishes to dissolve the party, this time embodied by the judiciary, whose power is declining. The road to the closure case, however, was also partly shaped by the AKP itself which seemed to lack a clear general strategy for governing the country. While this does not justify the case itself, the current disappointment with the party leads to support for the court case against it among certain segments of Turkish society. Indeed the AKP appears to be losing the support of some of its liberal constituency that had been won over by the party’s success in promoting reforms dating from its first term in office.

When the AKP first came to power, this was perceived by many as the victory of reformist forces against the rigid state establishment and the status quo parties in the country. In line with this assessment, the AKP government – particularly in its first term – undertook important measures towards democratic reform to fulfil the Copenhagen political criteria. However, especially from 2005 onwards, the reform process slowed down considerably, leading to disappointment both among EU circles and the reformist forces within the country. The government was perceived as attempting to appease the status quo forces in Turkey, for example through its reluctance to abolish outright Article 301 of the Penal Code, which regulates offences that involve “insulting Turkishness, the Republic, the parliament and state institutions”; or to undertake any reform relating to the Kurdish issue. Thus, the party did not only slow the pace of reform but also made significant concessions to the highly nationalist state establishment. On top of all this, the party failed to respond successfully to claims that both local and central party authorities were engaged in a rapid Islamisation of society. The headscarf controversy, which took place immediately before the filing of the closure case, was the turning point in such claims of Islamisation, although the Chief Prosecutor would most likely have filed the case even without the headscarf debate. However, the period of unease triggered by the lifting of the headscarf ban has arguably helped increase the credibility of the Chief Prosecutor’s claim and strengthened its support base.

Ironically, the closure case has led to the revitalisation of Turkey-EU relations that had largely been on the back burner for both parties until recently. Commission President Jose Manuel Barroso and Enlargement Commissioner Olli Rehn visited the country in April, followed by the EU Troika on 6 May. The messages from the EU were clear. On both occasions, the EU voiced its concerns about the closure case and expressed its expectation that the case be conducted according to European standards, namely the Venice Commission norms of December 1999. These rules permit the closure of political parties only in cases where the party concerned “advocates the use of violence or uses it as a political means to overthrow the democratic constitutional order”.¹

These criteria do not justify closing down the AKP. However, it is largely expected that the Court will rule to ban the AKP. A minimum of seven votes out of eleven are required to close down a political party, and the Court decided in favour of closure of the previous, albeit expressly Islamist in nature, incarnations of the AKP, as well as successive versions of pro-Kurdish parties. If the party is closed down, new elections would most likely be held with the participation of the AKP reconvened under a different name, but possibly without its leading

¹ See: http://www.venice.coe.int/site/main/Elections_referendums_E.asp

figures, such as Prime Minister Erdoğan, who would be banned from political life as an individual. The party would be weakened but could still come to power again, given the lack of a credible opposition. However, the costs of this decision would be high. Turkey would be entering a phase of grave political and economic instability, with severely hampered relations with the EU that could even result in the suspension of accession negotiations, depending on the legal grounds cited by the Court and the attitudes of the individual member states. Such a development could also lead to serious disappointment among those political leaders in the Southern neighbourhood that look up to AKP as a model 'Muslim democratic party' that succeeded in coming to power through democratic means.

There is a strong possibility that a decision in favour of closure will be taken to the European Court of Human Rights (ECHR). In previous party closure cases, with the exception of the decision to close down the Welfare Party, the ECHR has overturned closure decisions. However, the Constitutional Court did not take the decision to initiate retrial in any of these cases. But it should be recalled that all these cases predated the amendment made to Article 90 of the Turkish Constitution in 2004, which places the European Convention of Human Rights (ECtHR) above Turkish law.² Hence it can be argued that if a possible decision to close down the AKP is taken to ECHR, this will be a test case to see whether EU-induced constitutional reform will be taken into consideration by the Constitutional Court in party closure cases.

It is nevertheless hard to totally dismiss the possibility that the Constitutional Court will decide otherwise, given the expectation that the decision to close down the party would further aggravate the political and economic strains in the country. In the unlikely scenario in which the Constitutional Court decides not to close down the AKP, an opportunity may arise for the party to undertake substantial democratic reforms and put the troubled relations with Europe back on track. This could begin by putting the new draft constitution back onto the agenda and opening it up to public debate. In an ideal scenario, this could be done immediately, possibly along with a smaller constitutional reform package that would deal with matters of immediate importance, such as the abolition of Article 301 and the provisions related to the closure of political parties in the Law on Political Parties. By moving in this direction the AKP could also recapture the support of disillusioned liberals in the country as well as concerned friends of Turkey in the EU. This, unfortunately, does not seem to be the approach adopted by the government, however. Prime Minister Erdoğan refuses to take such steps on the grounds that they would further exacerbate political tensions. Furthermore, the recent cosmetic amendments to Article 301 geared solely towards the sustenance of European support against the closure case, and the recent use of excessive police force on demonstrators on 1 May, fuels doubts over the government's commitment to democracy. Thus, if he survives the court case, Erdoğan may choose to align himself and his party closer with the establishment, which does not necessarily imply more democracy for the country.

Whatever the outcome of the court ruling, it will certainly signal the beginning of a new era in Turkish politics. The only way out of the current political impasse seems to be the adoption of a conciliatory attitude by all parties concerned. This, however, seems to be only a remote possibility, given a governing party whose democratic credentials are now in question, an opposition that provides no credible alternative policy to the political and economic ills of the country, and a judiciary that has still not fully purged itself of the entrenched beliefs and attitudes of the state bureaucracy.

² The last paragraph of Article 90 states that "In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."