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Constitutional Court and the Closure of Political Parties in Turkey

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Summary
This policy brief aims to discuss the limits of the freedom of political parties in Turkey. The political party bans consitute one of the most important problems threatening the freedom of political parties in Turkey. The restrictions on the political parties come to the fore in two different forms: dissolution after the military coups and closure by means of legislation. In the current context of the case opened against the AK Party, it may be possible and advisable to apply an amendment, bringing Turkish jurisprudence in such matters in line with the standards of the European community.

The lawsuit by the Chief Public Prosecutor against the ruling Justice and Development Party (AK Party) has sparked a renewed debate about the legal basis of the closure of political parties in Turkey. After the start of multi-party political system in Turkey in 1946, one of the fundamental problems threatening the freedom of political parties in Turkey has been the existence of certain legal and constitutional restrictions on the formation and management of political parties. These restrictions have materialized in two different forms. First of all, some political parties have been dissolved as it happened after the military coups of May 27, 1960 and September 12, 1980. Secondly, political parties have been prevented from forming in the first place or shut down by means of legislation.

The introduction of the 1995 Constitutional amendment was intended to ensure that the Constitutional Court could not dissolve a political party merely on the grounds that its statutes or programs contradict the provisions of the Constitution, nor take into account only as a basis of judgment one or two of a party's activities among all of its activities. To satisfy the condition of being a center of activities, which contradict the provisions of the Constitution, it is necessary that a certain number of actions be carried out (the so-called "criterion of intensity") and that these actions be adopted by the authorized bodies of the party. Even though this safeguard has been regulated in the Political Parties Act twice, the Constitutional Court has

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declared it unconstitutional in the cases of both the Welfare Party (1998) and the Virtue Party (2001) so that it could render a decision of dissolution freely. As a reaction to this, the criteria for being a "center" were inserted into the text of Article 69 of the Constitution through the 2001 Constitutional Amendment.

In order to prevent the Constitutional Court from dissolving political parties frequently, the 3/5 majority voting criterion was introduced in lieu of a simple majority through the 2001 Constitutional Amendments. In addition, instead of the punishment of permanent dissolution, a new, lighter punishment was introduced, according to which the Constitutional Court may rule that the concerned party should be deprived of state aid wholly or in part, depending on the severity of the charges brought before the Court.

When considering the political parties dissolved so far, the most prevalent ground for closure has been the violation of the "indivisible integrity of the State's territory and nation." Several political parties, including those accused of having connections with the PKK terrorist organization, supporting the separatist terrorist organization in Turkey, or putting forward suggestions in regard to the Kurdish issue which is deemed in conflict with the official line, have been shut down. In some cases, the parties were dissolved due to inconsistencies present in their statute, program or actions, or because the Constitutional Court clearly found that there was an organic link with a terrorist organization (as was the case with the HADEP decision). Even in the absence of such a link, the Court has frequently held that the suggestions for solutions advocated by the accused political party were grounds for closure.

The Constitutional Court has dissolved political parties supporting federalism and advocating cultural and language related-rights. In the decisions about the People's Labour Party (HEP, 1993), the Freedom and Democracy Party (ÖZDEP, 1993), the Labour Party (İP, 1997), and the Socialist Party (SP, 1992), the Constitutional Court cited the "Kurdish people"/"Turkish people" distinction and their proposals as among the reasons for closure. In a similar vein, the Constitutional Court dissolved the Democracy Party (1994), the Democracy and Transformation Party (1996) and the Socialist Unity Party (1995) on the grounds that they demanded language and cultural rights for those of different ethnic origins. A positive development in this regard is the fact that the Court, in a decision whose merits have not yet been published, refused, at the beginning of 2008, a disclosure case initiated because of the presence of provisions that are contrary to the "indivisible integrity of the state together with its nation" in the program of the Rights and Freedoms Party.

Attitude of the Constitutional Court

Even though there are fewer instances of political parties being dissolved by the Constitutional Court due to the violation of the principle of the "secular state" than the principle of the "unitary state", the numbers of Members of Parliament have been very high. The Constitutional Court dissolved the National Order Party (1971) on the grounds that it advocated compulsory religious education and the abolishment of Article 163 of the Turkish Penal Code; the Tranquility Party (Huzur Partisi, HP, 1983) on the grounds that its program

had a provision advocating the addition of a ninth vowel to the Turkish alphabet, and because it rejected the notion that Turkey's secularism resembles that of socialist countries; ÖZDEP (1993) because of its view that the Presidency of the Religious Affairs should be removed from the structure of the general administration; and the Welfare Party (RP, 1998) and the Virtue Party (FP, 2001) because they advocated the lifting of the headscarf ban. In the Welfare Party decision, moreover, its advocacy of the plurality of legal systems, and its reception to the Residence of the Prime Ministry of those who were wearing clothes, which violated the Revolution Laws, were held to be grounds for dissolution. In short, the Constitutional Court has decided in favor of the dissolution of political parties on the grounds that they advocate the transformation of the principle of secularism defined in the Constitution and the laws.

The only positive change in jurisprudence to date has been the Constitutional Court's refusal of the demand for the dissolution of the Democratic Peace Movement Party, which held that the Presidency of the Religious Affairs should be taken out of the structure of the general administration. In the Court's refusal of this case, the involvement of the European Court of Human Rights, upon the application of ÖZDEP, had a clear impact. According to the ÖZDEP decision (1999) of the European Court of Human Rights, proposals for changes to be made to the present Constitution, advocated by a political party within the rules of democracy and by peaceful means, cannot be deemed as cause for dissolution insofar as they do not amount to the promotion of cessation or division.

As for the concept of "democratic Republic", the United Communist Party of Turkey (TBKP) was dissolved in 1991 for the sole reason that its name contained the word "Communist." Nevertheless, after assessing the case in 1998, the Constitutional Court did not find that the party's desire to come to power based on the class system was against democratic principles and refused the case for closure. This decision is one of the rare instances in which the Constitutional Court has adopted a libertarian attitude toward the expansion of the freedom of political parties.

Over the last four decades, the closure decisions rendered by the Constitutional Court have not been effective in curbing the plurality of political parties in Turkey. Upon the applications to the European Court of Human Rights concerning the dissolution decisions of the Constitutional Court, the ECHR found violations in all cases save that of the Welfare Party, and sentenced Turkey to numerous penalties.

In most cases, closure of political parties has been followed by the establishment of new parties. This is a major issue on the Turkish political and legal agenda, as evidenced by the indictment of the Chief Public Prosecutor against the AK Party. AK Party is faced with a closure case because of statements by its members, which would normally be considered within the ambit of freedom of thought. Given the extremely shaky legal reasoning that formed the basis of the Constitutional Court's closure decisions in the past, the current lawsuit against AK Party is obviously driven by ideology and politics than law. This makes it a necessity to start a process of judicial and legal reforms in Turkey as part of both domestic dynamics and the demands of EU regulations.

Conclusion and Recommendations

To prevent the frequent and arbitrary closure of political parties in Turkey, a number of practical measures should be taken. First of all, the Chief Public Prosecutor's initiation of a case of dissolution should be made subject to the permission of the legislative organ or the government. Should a case of dissolution be initiated against a ruling party, the qualified consent of the General Penal Board of the Court of Cassation should be sought.

Secondly, in keeping with the common standard accepted in Europe today, the dissolution of a political party should only be undertaken on the condition that violence has been adopted by that party as a method. A political party should enjoy the freedom of amending the Constitution by democratic means and by way of the procedure enunciated in the Constitution; a formula that will prevent a political party from being closed on the ground of such actions or intentions should be put into operation. One of the fundamental obstacles to democratic progress in Turkey is rooted in the fact that any attempt to amend the Constitution is accepted as a ground for the dissolution of political party. The goal of a political party to establish an ever more ideal constitutional order by amending the Constitution through democratic-constitutional ways should by no means be a ground for its dissolution.

Third, in the current context of the case opened against AK Party, it may be possible and advisable to pass an amendment, bringing Turkish jurisprudence in such matters in line with the standards of the European community. Although such a measure might be considered objectionable in that it might influence the judicial power secured by Article 138 of the Constitution, one should take into account the fact that such an amendment would not be geared towards influencing the judiciary in a negative way. Rather, the introduction of an ideal regulation into a problematic field would be aimed at finalizing the trials, together with the establishment of more liberal rules.

One final point to be underlined relates to the necessity of changing the viewpoints in practice. The Constitutional Court takes dissolution cases in such a way as to stick rigidly and exclusively to its own interpretation, ruling out different interpretations of the principles of the "unitary" and "secular" Republic, as if their interpretation represented a compulsory common standard to be necessarily valorized by all political parties, a position which contradicts the freedom of political parties in a democratic country. As far as the interpretation of freedoms and the regime of closure of political parties are concerned, there is a clear need to change the general intellectual framework surrounding the Constitutional Court decisions on the closure of political parties.