

## PROCEEDINGS TO BAN THE RULING TURKISH JUSTICE AND DEVELOPMENT PARTY (AKP)

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On July 30, 2008, the cliff-hanger was over for the ruling Turkish Party, the AKP. Contrary to what was generally expected when the proceedings began in March, the party had not been suspended. Nevertheless, the judgement should be interpreted as a warning according to the president of the Constitutional Court of Turkey, Hasim Kilic: no fewer than six of the panel's eleven judges had endorsed banning the party. Had there been seven, it would have been banned. In addition, four judges demanded imposing a fine. Only one judge, the president himself, was against both the ban and the fine. Thus, ten of eleven judges may be said to have endorsed the charge of the Attorney General that the AKP was a 'centre of anti-laicist activity'.

On July 31, the relief at the outcome of the trial that was felt both in Turkey and abroad was great. The EU Commissioner for Enlargement, Mr Rehn, called for reforms in the country. Even the Prime Minister, Recep Tayyip Erdogan, said that inaction was out from now on, and that the path chosen towards 'full EU membership' was the 'path of modernization indicated by Atatürk himself', denying the claim that his party had become a centre of anti-laicist activity. He received a pat on the back from Rusen Cakir, a journalist who praised the AKP's crisis management and attested that Mr Erdogan had refrained from making the trial a political issue and concentrated on current politics instead.

Although the political climate in Turkey has cooled off by now, the country's fundamental problem persists, namely its division into two opposing camps. There are many who divide the Turkish electorate into a Kemalist or laicist camp on the one hand and a religious or conservative camp on the other, a division which does not really reflect the complexity of the situation. AKP opponents believe that the republic's fundamental values are threatened and even assume that a secret agenda exists for the establishment of an Islamist state. This cannot fail to make an impression, since fear of Islamization is widespread in Turkey.

The key charge levelled against the AKP was revolved around laicism and/or the claim that the party had become a centre for activities aimed at its abolition. The principle of laicism is almost ubiquitous in Turkey's constitution. The subordination of religion to the state is firmly embedded. The administrator of Islam – the Sunni branch – is the presidium for religious affairs, the Diyanet Isleri Bakanligi, which is also the superior authority for the country's imams and muezzins who are all civil servants. The relationship between the state and religion and, by the same token, the subject of laicism

gives rise to many controversies: the debate about headscarves, about university access for preacher school graduates, about religion as a mandatory subject in school, and about Quran courses. Kemalists regard laicism as the strongest force that holds the country's society together, believing that democracy would be threatened by its absence. The conservatives, on the other hand, interpret it as a guarantee of religious freedom.

Any evaluation of the application to ban the AKP should not concentrate solely in the principles of laicism, for the status of the political parties in Turkey is important as well. Both in constitutional and in party legislation, political parties are confirmed as indispensable components of democratic political life and called upon to base their work on Atatürk's principle and preserve the laicist character of the republic. In party law, there are numerous provisions which the parties have to observe. If these are infringed, the guilty party may be banned.

Applications for such a ban will be submitted by the Attorney General of the Republic to the Turkish Court of Appeal. The case will then be heard in the Constitutional Court which, if supported by three quarters of the votes on the panel, may issue a ban that would be legally enforceable and final. Proceedings may be opened after a party has been charged with violating the constitution (specifically Articles 68 and 69) and the party act (Article 101). Since the court was established, there have been 120 party trials, of which 49 were about a ban and 71 about a formal warning. In 26 proceedings of the former category, the parties accused were suspended, while they were acquitted in 18, as in the recent HAK-PAR and AKP cases. Before 2001, parties could only be suspended but not fined. The last party to be banned in the spring of 2003 was the Halkin Demokrasi Partisi. Early in 2008, many people felt encouraged when an application to ban the pro-Kurdish HAKPAR fell through, although the outcome of the vote was as tight as could be at six to five in favour of the party, which had been charged with following a course that was ethnically motivated and hostile towards integration.

The panel of the Constitutional Court, which was established after the putsch of 1961, consists of eleven members – the president, his deputy, and nine ordinary judges – as well as four standby members. All 15 members are appointed for life by the president of the state. There are quite a few citizens who criticize this appointment procedure, including the president of the Constitutional Court himself, in whose opinion judges should be elected by parliament. The eleven members of the panel elect their chairman and his deputy from their own number in a secret ballot by simple majority. In addition to the judges themselves, the Court is currently served by 23 rapporteurs whose duty is to draft judgements and expert opinions which are then submitted to the Senate. While rapporteurs may voice their opinion, they have no right to vote.

In concrete terms, the application to ban the AKP was based on the charge that 71 of its representatives – Prime Minister Recep Tayyip Erdogan, President Abdullah Gül, the former President of Parliament, Bülent Arinc, and others – had been transforming the party into a 'centre of anti-laicist activity'. By way of introduction, the indictment explained the role of political parties in a democracy, and that a democracy might ban any party that became dangerous. This was followed by a treatise on the genesis of laicism which, according to the text, guarantees state neutrality towards religions without, however, allowing them boundless freedom, there being a difference between the character of democracy in Turkey and in the West. The indictment went on to say that the country was to have a moderate Islamic model imposed on it which would serve the establishment of a Sharia state – by terrorist means, if necessary. Next came a list of numerous constitutional articles relating to laicism and Mustafa Kemal Atatürk as well as explanations of some passages in the party act on the categorization of statements made by politicians. The indictment concluded by saying that the AKP was following the tradition of political Islam established by the four parties previously banned, and that it had been encouraged by its recent successes at the polls to begin seriously pursuing its goal of establishing an Islamic state, which justified banning it.

The list of Mr Erdogan's charges included 61 counts, mostly snatches from interviews and speeches in which he talked about the headscarf question, laicism, preacher schools, and Quran courses. Thus, for example, he is supposed to have remarked in London in 2005 that a Christian country like Great Britain was permitting women in public service to wear a headscarf, whereas Turkey did not. He is supposed to have told a lady journalist that while he personally was not laicistic, the state was, so that he in his capacity as Prime Minister was obliged to protect the laicist order. Moreover, it was claimed that in 2007 he had offered the parents of two schoolgirls who had been forbidden to wear headscarves during an award ceremony to take disciplinary steps against those responsible for the ban.

The former President of the Turkish Parliament, Mr Arinc, was charged with having violated parliamentary sovereignty. Moreover, he is supposed to have said in 2003 that those who were 'on their way to power' had to be dishonest if they did not wish to be 'shackled'. Mr Gül had to defend himself on ten counts, having made statements on headscarves and preacher schools that were similar to those of other AKP politicians. The Minister for Education, Hüseyin Celik, was similarly charged with anti-laicist behaviour. He was said to have been behind the abolition of the coefficient rule for preacher school graduates. In 2005, he is supposed to have permitted teachers of religion to demonstrate prayer and ablution ceremonies in mosques. Similar charges were levelled against other MPs,

such as Ömer Dincer, Burhan Kuzu, and Irfan Gündüz. Local AKP functionaries and mayors belonging to the party were embroiled as well: one of those is said to have ordered prayers of supplication to be read in the mosques of his community, while another was charged with having distributed 5000 copies of the Quran with the AKP logo. The last 14 counts concerned former AKP governments which were said to have violated the principle of laicism with their general policy.

According to media reports, the judges threw out the bulk of the alleged evidence against the AKP and its members before arriving at a sentence. Ergun Özbudun, a politologist, even believes that the Attorney General's indictment did not contain a single piece of sound evidence for the conversion of the party into a 'centre of anti-laicist activity'. Only a strict interpretation of the concept of laicism, according to which almost any statement could be read as anti-laicist, had made it possible to bring the case in the first place, showing the urgency of the need for a new, more democratic and liberal constitution in Turkey. While the AKP was certainly spared this time, the ban issue is still hovering in the background. It would be advisable, particularly in view of the EU accession negotiations, to proceed reasonably and with foresight, endeavouring to ensure greater respect for fundamental and human rights, the protection of minorities, and the freedom of religion, not least for Alawites and non-Muslims. For if the party should go on arousing scepticism among its critics and polarizing the people by making statements about religion, the next prohibition trial would certainly not be far away.

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