

Will the Turkish Constitutional Court Ban the AKP?

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Brief Analysis

On March 14, Turkey's chief prosecutor, Abdurrahman Yalçınkaya, filed a case with the country's Constitutional Court asking it to shut down the ruling Justice and Development Party (AKP) and ban seventy-one of its members from seeking elected office for five years. He accused the party of spearheading "anti-secular activities" in violation of the Turkish constitution. Although the court's disposition is uncertain, the case is likely to strengthen the AKP regardless of the outcome.

The Process

The Constitutional Court has shut down Islamist parties in the past. In 1998, for example, it banned the AKP's predecessor, the Welfare Party (RP), on similar charges of violating constitutional mandates regarding secularism. The court has not shut down a ruling party before, however, let alone one with a solid mandate -- in the July 2007 parliamentary elections, the AKP garnered 47 percent of the vote.

The next step in the process, now that the prosecutor has filed the indictment, is for a "rapporteur" -- one of the eleven judges on the Constitutional Court -- to review the case from a procedural perspective. The rapporteur will decide by March 27 whether to allow the case to proceed. If he/she assents, the court will send the indictment to the AKP. The party would then have one month to present a written defense (though it may request extra time). This would be followed by oral arguments in which each side is given an opportunity to defend its position. The rapporteur would then provide a written report to the court summarizing his/her findings. Both the chief prosecutor and AKP officials can submit additional evidence or written arguments to the rapporteur before that document is finalized. Given all of these stages, the process could take many months -- the case that shut down the RP, for example, required eight months to resolve.

The Court's Composition

To pass the AKP ban, seven of the eleven judges are required to vote in favor of the indictment. Eight of the current judges were appointed by former president Ahmet Sezer and tend to be pro-secular. The last time the court made a decision regarding the party, it annulled the AKP-headed April 2007 parliamentary vote to elect then-foreign minister Abdullah Gül as president in Sezer's place. In the 9-2 decision, all eight of Sezer's appointees voted in favor of blocking Gül's election.

European Precedents

If the indictment holds, the AKP case may eventually end up before the European Court of Human Rights (ECHR), which Turkish law recognizes as the highest appeals court. When the Turkish Constitutional Court shut down the RP, the case was appealed to the ECHR, which ruled that the party's dissolution was "necessary in a democratic society." The ECHR has also blessed the banning of political parties in other countries. In 2003, when the Spanish supreme court declared the Batasuna party to be the political arm of the Basque group ETA -- a terrorist organization and, therefore, illegal -- the ECHR affirmed the move, again deeming it "necessary in a democratic society."

The AKP's Defense

Precedents aside, it is not certain that the Turkish court will agree to take the prosecutor's case or, if it does, that it will shut down the AKP. The court's intervention against Gül's election backfired when the AKP cast it as an attempt to block "popular will" and the election of "a religious man" to the presidency. Following that judgment, the AKP became an underdog of sorts, drawing massive public support. It then scored its monumental victory in the July 2007 parliamentary elections; by August, its efforts to elect Gül finally prevailed.

Given these developments, the court may now recognize that banning the AKP could actually strengthen public support for the party by mobilizing its brand -- "a religious party representing the popular will." Indeed, the AKP leadership is already advancing these themes. On March 15, Prime Minister Recep Tayyip Erdoğan attacked the prosecutor's case by citing the Quran's Araf sura, which states that people who refuse to acknowledge religion "are like cattle." The following day, he argued that the indictment was against the popular will.

To avoid bolstering the AKP, the court may look to pass a less drastic verdict. One possibility would be to focus on banning certain individuals or withholding financial aid from the Turkish treasury rather than banning the party outright. This "yellow card," to use a soccer term, would serve as a warning to the party and might avert the political turmoil a "red card" would likely incite.

Implications for Turkish Democracy

Whatever the court decides, the case is likely to strengthen the AKP. At this stage, any court action against the AKP, regardless of its merits or substance, will be seen as a move against religiosity and popular will, both of which give the party its bulldozer-like force in Turkish politics.

Between 2002 and 2007, the AKP pursued consensual politics, making alliances with liberals, the media, and the powerful business lobby on European Union accession, among other issues. Yet, once formal accession talks with the union actually began in 2005, the AKP stopped aggressively pursuing the issue. And after its July 2007 electoral victory, the party lost its appetite for consensual politics. Last month, for example, it passed legislation to permit the wearing of Islamic-style headscarves on college campuses, effectively deciding Turkey's most divisive political issue after only three weeks of debate. Additionally, the party has been drafting a new constitution for the past seven months without public input.

These developments toward political majoritarianism seem to have alarmed the chief prosecutor sufficiently to issue a warning against the AKP. Ironically, however, the move will likely only consolidate public support for the party, solidifying its existing majoritarian tendencies.

The AKP's current power -- including its ability to counterbalance any court action -- has politically emasculated the secular Turkish judiciary, leaving it with few options. Consequently, the party's next steps will actually be more important than the Constitutional Court's. When the court shut down the RP in 1998, some party members felt compelled to moderate and eschew public Islamism. These individuals eventually created the AKP. It is not certain whether the court's current action will have a similar effect, however -- that is, encouraging the growth of a "new old AKP" (a party that returns to its political behavior of 2002-2007). Given its full control over the legislative and executive branches, and its ability to mobilize a public image that trumps the judiciary, the AKP could potentially rule Turkey with majority public support, unrestrained by increasingly weak checks and balances.

Soner Cagaptay is a senior fellow and director of the [Turkish Research Program \(templateI02.php?SID=12&newActiveSubNav=Turkish%20Research%20Program&activeSubNavLink=templateI02.php%3FSID%3D12&newActiveNav=researchPrograms\)](#) at The Washington Institute. H. Akin Unver and Hale Arifagaoglu are with the program as well, as a research assistant and research intern, respectively. ❖

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