

# Rising Tensions Between Turkey's AKP and the Courts

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## Brief Analysis

On May 17, a gunman chanting Islamist slogans attacked the Turkish Council of State (the Danistay, or high court for administrative affairs) in Ankara. The gunman killed one judge and wounded four others who were sitting in the Council's second chamber, which has recently upheld Turkey's ban on "turbans" in schools. In accordance with the European and Turkish notion of secularism (*laïcité* in French) as freedom from religious symbols in the public sphere, Turkey bans public officials and school students wearing turbans—a specific style of women's headcover that emerged in the mid 1980s and that the courts consider an Islamist political symbol. (Turbans are distinct from traditional headscarves, which are not banned.) Photographs of the judges had earlier been published in Islamist newspapers with headlines targeting them.

Although the attack might be an isolated incident, it followed months of quarrels about secularism between the Justice and Development Party (AKP) government and the high courts. This tension could escalate to threaten to the ability of the AKP, a party with Islamist origins, to remain in government.

## AKP Has Failed to Cohabit with Secularism

In 2002 when the AKP came to power, it seemed Turkey had found a *modus vivendi* between Islamist politics and a secular democratic regime.

The AKP's predecessor, the Welfare Party, espoused an Islamist platform with anti-Western, antiseccular, anti-U.S., and antidemocratic attitudes. In 1996, Welfare assumed power in a coalition government. It launched Islamist domestic measures, such as banning alcohol, and Islamist foreign policy steps, including a call to establish the "Muslim Eight," a grouping of Muslim countries including Turkey, Libya, and Iran. Turkey's secular bloc (the media, opposition parties, courts, nongovernmental organizations, and the military) protested against the Welfare government, and public demonstrations brought it down in 1997. The AKP grew out this experience and attempted to avoid confrontation with the secular republic. In 2001, the AKP split away from Welfare, branding itself a conservative democratic movement. Once in power in November 2002, the AKP took steps to avoid the fate of its Islamist predecessor, aggressively pursuing European Union (EU) membership for Turkey and suggesting it would not confront the country's secular system or undo its pro-Western foreign policy.

For much of 2003–04, the AKP was able unite Turkey around this rhetoric, establishing a "grand national

consensus” around EU accession, an objective supported by most Turks. Yet this consensus withered away once Turkey achieved the first step of entering accession talks with the EU in October 2005. European objections to Turkey’s membership further diluted Turkish enthusiasm for the union. At this juncture, with the AKP inviting Hamas to Ankara, the party’s Islamist foreign policy moves—rapprochement with Syria, sharp criticism of the Iraq War and Israel, enhanced dialogue with Iran, and membership application to the Arab League (the Arab League responded that Turkey is not Arab country)—came to observers’ notice.

A second development of the period since October 2005 is that the Turks’ attention has turned away from the EU back to domestic politics. As a result, the AKP has come under fierce scrutiny. In evolving away from the Islamist Welfare Party, the AKP has become a modernist Islamist movement that supports democracy but also challenges Turkey’s Western orientation. In this regard, the AKP’s latest departure from its 2002 rhetoric has been on secularism. For instance, Prime Minister Recep Tayyip Erdogan has questioned the Council of State’s decision to uphold secular values, and AKP leaders have attacked Turkey’s constitutional definition of secularism. These events have led to a surge in political tensions, with heated exchanges between the AKP and the secularist press, opposing political parties, and the courts.

### The AKP Versus the Courts

The struggle between the AKP and the high courts is the chief dynamic of Turkish politics. The AKP currently has 357 of the 550 seats in parliament. As such, the party controls the executive and legislative branches of government. The courts, which are fiercely independent and secular, and the president, who has a one-time veto on legislation, pose the only checks to the party’s power.

One particularly contentious issue between the governing party and the courts has been the composition of the Higher Council of Judges and Public Prosecutors (HSYK), a body responsible for hiring, appointing, and promoting Turkish judges and prosecutors. The HSYK has seven members: five judges and prosecutors—known as the “peer members”—and two political appointees selected by the government who control the HSYK’s secretariat and agenda. The EU wants Turkey to turn the HSYK into an entirely peer-run body. The AKP has resisted this request. With mutual tolerance waning between the AKP and the courts, quarrels over secularism, as well as debates over the HSYK and the future of the judiciary—new AKP legislation mandates early retirement for more than four thousands judges and prosecutors whose positions will be filled by the HSYK—will dominate the Turkish political landscape in 2006. While the Turkish military spearheaded the public campaign against the Islamist RP in 1996–97, this time the courts are at the forefront of the emerging secular campaign against the AKP.

### A Likely Path to Early Elections

The rising political tensions of 2006 anticipate two upcoming elections next year. In spring 2007, parliament is set to elect a new president, and in November 2007, Turks are to vote for a new parliament and government. With the AKP’s antiseccularist stance, though, the high courts and the secular political bloc will act to prevent a lame-duck AKP from unilaterally electing the next president. The battle for the presidency is a battle for the courts; the president alone has the constitutional prerogative of appointing judges to the high courts as well as naming the peer members of the HSYK.

Arguments already are being advanced for why this parliament should not elect the president. For one thing, the parliament’s mandate will expire shortly after the election of a president to a seven year term. In addition, the legitimacy of the current parliament is undercut by the fact that the two parties in it—the AKP and the opposition Republican Peoples Party—between them won only 55 percent of the votes in the last election. Because of a 10 percent threshold for a party to be seated in parliament, parties that won a total of 45 percent of the vote were left out after elections in November 2002.

Questions about the legitimacy of a president chosen by the current parliament will raise the possibility of early elections before of the presidential ballot to create a more representative parliament with a fresh mandate. Even though the AKP appears likely to continue to be the most popular party in parliamentary elections, more parties are likely to cross the 10 percent threshold this time, producing better proportional representation in the parliament. From the AKP's perspective, early elections threaten to end the party's domination of parliament and crush its chance to elect the next president unilaterally.

#### AKP 2.0: A Secular Conservative Movement

The most likely scenario that would produce early elections would be the defection of at least eighty-two AKP parliamentarians; that would deny the party a majority and ending its government with a vote of no confidence. If political polarization over secularism persists, a sufficient number of AKP deputies might abandon the party; avoiding confrontation with the secular republic has been a trademark of conservative and Islamist political movements in Turkey. The AKP could weather the storm by regenerating or spinning off a new version of itself, the way the AKP emerged from Welfare in 2001. This reinvented "AKP 2.0" would steer away from modernist Islamism toward a secular conservative outlook. It would be a rightwing movement, but also respectful of the country's secularism and Western orientation. Whether AKP 2.0 takes off depends on whether the AKP continues to challenge secularism. Further tensions with the courts and continued AKP criticism of secularism could be the harbingers of political change in Turkey.

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