



The Fragility of Turkish Political Structures – The AKP Closure Case

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Abstract

For the Justice and Development Party (AKP), one of the most serious challenges in its history was the dissolution lawsuit against the party in 2008. This was not because there would have been no precedent in Turkey for banning the various political parties, but because by then one could speak of a government party with serious social support that had already won two parliamentary elections. Since the founding of the Republic of Turkey, it has not been uncommon for one or another political formation to be banned, but at times they have reactivated themselves under a different name. In fact, the initial, one-party era of the republic was also created by the situation provoked by the founder of the state, Mustafa Kemal Atatürk, who banned rival, opposition parties that threatened his position. Even since the introduction of the multi-party system in 1946 and the first multi-party election in 1950, nearly three dozen parties have been doomed. These included Kurdish separatist groups, parties with communist ideologies, but also the AKP's moderate Islamist predecessors. It has also happened that the leaders of a military coup have decided to ban some parties, but it has also been the case that in a peaceful and democratic period the prosecution has initiated the same in the Constitutional Court claiming that one party or another is opposed to the most basic republican principles. Yet the case of the AKP was special because, in the case of a party that had been ruling alone for six years, it was still surprising that it was not its political opponent trying to overthrow its power, but the legal nomenclature attached to the old

elite. In the second half of the 2000s, the AKP was still taking reluctant steps towards democratic opening, and it was far from the authoritarian style and centralization efforts that characterize it today, yet it can be said that they had fairly stable political positions. Of course, it is no coincidence that several things have weakened the situation of the AKP, and the party leaders could not have felt that they were surviving this crisis in a political sense. There was a chance that the organization would actually cease to function and the Prime Minister and the President of the Republic would be banned from practicing public affairs for up to 5 years. The legal process aimed at banning the party has resonated heavily in Turkey, but has come as a real surprise only to the Western public opinion. The purpose of this article is to look at why the Turks were so laconic about the situation and why it has caused so much uproar in Europe and America. At the same time, it will be possible to see the main differences between Western and Turkish democratic traditions. As the wrangling around the ban of the AKP excited foreign observers more than domestic experts, the literature used for the article was also mostly in English, and only a small number of works in Turkish were taken into consideration.

Keywords: Turkey, political parties, political identities, freedom of association, constitutionality

Historical background to the ban on political parties in Turkey

The first legal authorization of political parties on Turkish soil took place in 1909. In the time of the Ottoman Empire, the political parties thus had only a particular significance, they could not have much say in the real political processes and decisions, because power was still concentrated in the hands of the sultan at that time. The predecessor of today's Turkish party law was the 1961 constitution. The military junta that perpetrated the 1960 coup wanted to put the Turkish party structure on a new footing, so it repealed the party law in force until then and set the legal framework in a higher-ranking law. Following a subsequent coup, the 1982 constitution was born, paragraphs 68 and 69 of which still govern the formation, operation, and dissolution of parties. Until 1995, this basic law allowed the Constitutional Court to dissolve a political party without any evidentiary procedure if it deemed its activities dangerous. An amendment in 1995 already provides for a formal court hearing and makes the banning of parties subject to the consent of two-thirds of judges. At the same time, the Grand Turkish National Assembly enacted a party law that is already very similar in principle and detail to the law customary in Western liberal democracies. (Albayrak Coskun, 2008:145)

If an analyst examines the history of banning Turkish political parties, they can see that the first modern case took place in 1960, when the perpetrators of the coup disbanded the Democratic Party (DP), which ruled for 10 years, and executed its leader, Adnan Menderes who served as prime minister between 1950 and 1960. On the ground of the 1961 constitution introduced by the coupists and the 1982 constitution created by later military junta, the Constitutional Court abolished a further 24 political parties. These can be divided into three different groups: there were Kurdish separatist, a communist, and a moderate Islamist formations related to the AKP among them. Incidentally, the ban on political parties did not end with the AKP coming to power in 2002. The Democratic People's Party (DEHAP), founded in 1997 and considered by Western media as a Kurdish-friendly, was banned in 2005, while two years later, in 2007, another organization with a similar profile, the Democratic Society Party (DTP), suffered a similar fate. (Albayrak Coskun, 2008:146) In the case of DEHAP, the prosecutor's office did not complain that the party was defending the interests of the Kurdish ethnic minority or pursuing a nationalist or separatist policy. The main accusation against the DEHAP leadership was that false papers were used to found the party and run in the elections, thus committing the crime of falsifying public documents. The party was disbanded despite failing to enter the National Assembly under the new suffrage law introduced for the 2002 elections, as it did not reach the 10% threshold when it reached 6.23% of the vote. (Bozarlsan, 2021)

In order to better understand the situation of the AKP, the most important case of party banning is that of the Welfare Party's (Refah Partisi - RP) dissolution in 1997, and the banning of the Virtues Party (Fazilet Partisi - FP) in 2001. The Refah Party was formed on the ruins of previously banned organizations by political followers of the moderate Islamist traditions in 1995, just as the constitution was amended and a new party law was used to bring the Turkish party system into line with Western norms. Refah took advantage of and abused the opportunity thus created, as they very soon became very radical in their discourse and politicization. Despite the fact that they won the most votes in the 1995 elections and became the most important member of the governing coalitions, in 1997 during the so-called postmodern coup, they could not avoid the ban after the military memorandum. The strength of the secular and Kemalist elite at the time of the ban on Refah is also well illustrated by the fact that only two of the then constitutional judges voted against the ban. (Golcu, 2013:119)

The ban of the above mentioned Islamist parties had some positive effects on their movement. On the one hand, Turkish Islamists learned from the relative failure of the short-lived RP and FP, and on the other hand, this experience led to a rift within the movement.. Necmettin Erbakan peacefully

overthrown by the military, has set up a new formation by the name of Happiness Party (Saadet Partisi – SP) that still holds radical views and a small electoral base, but is now cooperating with the opposition of the AKP. Whereas Erbakan's best-known student, Recep Tayyip Erdogan, and his circle founded the AKP a little later, in 2001, which was much more moderate at first than the conservative parties of previous decades and took great care for a long time not to be accused of unconstitutionality. (Aydingag and Isiksal, 2021:502)

Between 2002 and 2004, the newly acceded AKP did its utmost to work according to the expectations of the European Union and to meet the Copenhagen criteria for candidate status. During these two years, no less than eight packages of amendments to the laws concerning democratic institutions were submitted to the National Assembly. This process has been seen by the West, and within it by the European Union, as a democratic opening. Among other things, these amendments to the law made it legally more difficult to ban parties. (Aydingag and Isiksal, 2021:507) In this initial era of governance, the AKP was still really serious about democratization. On the one hand, it wanted to comply with certain Western institutions, such as the European Union or the Venice Commission, and on the other hand, it wanted to win the confidence of democratically committed, centrist or undecided voters. The party's goal after the 2007 parliamentary election victory was to give the people a completely new, civilian constitution, as it became increasingly uncomfortable that the Turkish constitution, which is still in force today, was drafted by those soldiers in 1982 who overthrew the civilian government in 1980. The AKP commissioned one of Turkey's best-known social scientists, Ergun Ozbudun, and four other constitutional lawyers to produce a constitutional reform. The AKP at the time was still thinking of a constitution that would extend individual freedoms, protect the rights of ethnic and national minorities, and liberalize regulation around parties, making it more difficult to ban them. Due to the internal political conflicts following the 2007 elections and the lawsuit against the AKP, the idea of a new constitution was eventually rejected by the government led by Recep Tayyip Erdogan and replaced by the amendment of the old constitution and the enshrinement of democratic freedoms in other laws. (Bali, 2015:291) Prior to the democratization packages of the AKP, both Turkish and Western public opinion saw the Turkish Constitutional Court's party-banning practice as a process that served a less legitimate, much more political purpose. If the old Kemalist elite was unable to defeat a rival by political means, it took out the ban, arguing that this was necessary in the fight against radical Islamism or Kurdish nationalism. (Bali, 2013:668)

The attempt to ban the AKP as one of the battles of the "war of identities"

On March 14, 2008, the chief prosecutor of the Court of Appeals addressed a lawsuit to the Constitutional Court to ban the Party of Justice and Development and to forbid its 71 leading politicians from practicing public affairs for 5 years. Among those to be banned were the newly elected President of the Republic, Abdullah Gul, and Prime Minister Recep Tayyip Erdogan. The most interesting in the lawsuit was that the main argument that was used against the AKP was a constitutional amendment regarding the use of headscarves at the universities, which was also voted by the Nationalist National Action Party (MHP), but the prosecutor's office did not demand the abolition of the radical right-wing party. (Dagi, 2008:2) Otherwise, the prosecution has quite extensive powers to oversee the functioning of the parties, so if the arguments against the AKP were considered valid, they could have taken action against the MHP, too. The prosecutor's office keeps a file on all Turkish political parties and, if necessary, may hold extraordinary consultations with their leaders. This was not the case for the MHP. (Rumpf and Akarturk, 2008:7)

After the indictment was filed, as early as March 2008, a multi-level, heated debate erupted in Turkish public opinion. One dilemma was of a legal nature, and lawyers speculated which passage of the Penal Code the judges would apply, and based on it what punishment was expected, whether a ban on the AKP was indeed conceivable. The second clash touched on political issues and the parties meditated on what the role of the President of the Republic was in Turkish democracy. Several constitutional amendments signed by Abdullah Gul, who had only come to power with great difficulty through an early election, were the subject of the lawsuit. It was only then that the Turkish people realized that the President of the Republic was the head of state and had the right to sign a constitutional amendment proposal, and that the Turkish constitution was not set in stone, it was not a political scandal to change it. Until 2007-2008, the President of the Republic of Turkey exercised essentially only ceremonial powers and defended the Atatürk's political superstructure, but was not an active participant in political games. It can also be said that the Turkish political system began to move from the parliamentary regime to the presidential system known today around this moment in time. (Sevinc, 2008:258)

Members of the old Kemalist elite hostile to the AKP have made the legal process an instrument of their political activism and have thrown themselves into the work with great impetus. Because all high bureaucrats, high judges, members of the constitutional court, senior officers, generals and so are sit there. There was serious activity at that time. Despite great effort, the action against the ruling party was unsuccessful. (Ilter, 2012) „On

July 30, six judges on the Constitutional Court voted to ban the party, one short of the required super-majority, providing the AKP with a narrow escape.” (Migdalovitz, 2008:4)

In the Turkish public opinion, the 2008 lawsuit against the Justice and Development Party is mostly seen as a struggle of rival identities. It is true that arguments in many cases were based on practical examples, but it was clear to all Turks that two conservative approaches clashed here and now. On one side are the defenders of Ataturk’s secular traditions, on the other are the followers of Islamic religious customs. Proponents of the ban have often raised cases, such as allowing the use of headscarves in hospitals and public education, to suggest that the AKP is putting pressure on Turkish women. In reality, however, two worldviews were at odds. The old side, which interprets the headscarf as a political stance and the neo-conservatives who treat the headscarf as a private matter but want to allow it. The ideological battle was about whether Ataturk’s secular principles would prevail in public spaces or whether democratic ideas favorable to Islamists would be taken into account. The Kemalist elite, of course, considered the situation to be that the AKP was only seemingly democratic, and if it maximized its power, it would immediately introduce sharia and make the use of shawls mandatory. (Aydindag and Isiksal, 2021:510) Kemalist women also feared that their progressive feminism would give birth to a right-wing rival, an authoritarian feminism, that would strengthen AKP Islamism. For this reason, those close to the female section of the CHP and other left-wing feminists also hoped for success in the lawsuit. (Chislett, 2008:4) Thus, in addition to the secular-religious dichotomy, a feminist rivalry also lurked in the background. The struggle for identities also extended to female self-awareness.

The prosecution’s own argument also shows that in the 2008 trial the headscarf was just an excuse to use against the ruling party, this case was much more about principles and identity than about what women wear. The main argument put forward by the prosecutor's office against the AKP was that all those who questioned Turkey's secular system and anti-secular political activism, which was also the focus of the ruling party according to the old Kemalist elite, were grouped around the party. The accusations also only referred to cases where women wearing headscarves, but mostly objected to the direction of politicization of the AKP and certain statements made by some AKP politicians. (Bali, 2013:689)

It can be explained from the above that the specific political steps were less emphasized in the indictment, it may seem more like a socio-philosophical discussion paper to the Western reader than an actual accusation. The prosecution mostly revolves around the definition of a secular state and seeks to prove that the AKP is politicizing the opposite on

several points. In this political and legal framework, essentially all religious developments could be brought against the AKP and its leaders. A system of principles that is theoretically idealized and less legally defined can be violated in a number of ways. The AKP felt in vain that its political steps were in line with the secular state. The problem was that they based their assessment on their own image of the secular state, and not on what the Kemalists thought of the same thing. The AKP may have felt too soon that they were surely dominating the political arena and could interpret certain terms contrary to the old consensus. „The use of religious expressions in public speeches, reference to the interests of religiously observant women, and arguments in favor of greater freedom from state regulation for religious institutions were all cited as evidence of anti-secular activities.” (Bali, 2013:689)

The political behavior of the AKP did not differ much from the mindset of the prosecution and the political left. As much as those who aimed to ban the AKP took a philosophical approach, the ruling party argued in the same abstract way. In essence, they wanted to point out that they have a right to a new interpretation of old concepts and thus will not be enemies of republican principles, they will only place them in a modern interpretive framework. The ambiguous decision of the Constitutional Court just shows that this philosophical debate took place in a transitional period when the followers of the restrictive narrative still had some political power but no longer had the ability to fully dominate the political field and public discourse. The relative success of the ruling party at the end can be explained by the fact that „the AKP argued that a commitment to the constitutional principle of secularism need not take the form of a substantive commitment to a particular metaphysical conception of secularity.” (Bali, 2013:689)

The "war of identities" has caused a constitutional crisis

The decisions of the Turkish Constitutional Court in 2007 and 2008 show that the above-mentioned war of identities did not leave the Turkish constitutional system itself untouched, which led to the reform of the 1982 constitution and the 2010 referendum on it. The "loss" of the Turkish Constitutional Court was caused precisely by its involvement in a serious self-contradiction, as there were also sharp differences between its own conservative and progressive members. After the Constitutional Court overturned AKP-backed legislation that allowed the use of shawls in universities but did not ban the AKP, the board lost a great deal of its credibility. The Constitutional Court itself was unable to get out of this crisis of confidence, giving Prime Minister Recep Tayyip Erdogan the means to reshape the legal framework governing the court itself. Moreover, he even

gained serious social support by ratifying the decision in a referendum. (Bali, 2015:250)

The decision of the Constitutional Court, in particular that it eventually withdrew state support for the party, was interpreted as a misrepresentation, a search for a path or a political position by the court. According to some analysts, the Constitutional Court has ruled that it is not the AKP as a party that is at stake, but its identity and political orientation. They gave an interpretation of the events that the AKP could still “change,” and it would be up to the AKP to reinforce its conservative line and separate its identity well from traditional and radical Islamism. (Gumuscu and Sert, 2009:954)

The constitutional crisis soon became a political crisis, which was also perceived by those who originally campaigned for a ban on the AKP. It has become clear that both AKP and Recep Tayyip Erdogan can only emerge victorious from the proceedings. Either an ambiguous verdict is made, as finally pronounced, or the party is banned, making it easier for Erdogan to show himself as a victim immediately. In the latter case, the AKP would have ceased to exist only temporarily, because it would have relaunched under the leadership of other people, and Erdogan, having finished his ban, would have been able to return triumphantly to Turkish domestic politics. The political and legal opponents of the AKP had to understand that they had been trapped by themselves. (Dagi, 2008:5)

Reaction in the West

Although Western countries can be said to have liberal principles regarding the functioning of parties, and it is quite rare that they ban political groups, they still use this tool at times. And it is quite rare to ban political sheds, they still use this tool at times. The Germans, who are quite liberal since World War II., have been so strict in the 1950s that the German Imperial Socialist Party (Sozialistische Reichspartei Deutschlands - SPR) closed to the Nazi ideology, and the German Communist Party (Kommunistische Partei Deutschlands-KP) were banned. A closer example in time can be found in Spain, where a political formation that allegedly cooperated with the Basque separatist terrorist organization, the ETA, was banned from operating in the early 2000s. (Albayrak Coskun, 2008:142) The case of the Batasuna party in the Spanish Basque Country can be linked to Turkey to the extent that the case has been brought before the European Court of Human Rights (ECtHR), as have several pro-Kurdish groups in Turkey, such as the HEP or the DEP. (Rumpf and Akarturk, 2008:18) The same European judiciary also issued an opinion on the case of the predecessor party of the AKP, Refah. They then declared the decision of the

Turkish Constitutional Court lawful by four votes to three. (Rumpf and Akarturk, 2008:20)

An attempt to ban the AKP has provoked extremely violent reactions in the West, especially in Europe. The European Union has strongly condemned the legal process, with Portuguese President José Manuel Barroso, for example, explaining that a ban on the AKP could hinder or even halt Turkey's European integration. Swedish Enlargement Commissioner Olli Rehn added that „in a normal European democracy, political issues are debated in parliament and decided in the ballot box, not in the courtroom.” (Dagi, 2008:2) In addition to the fundamentally liberal approach of European politicians, the fact that the EU saw the AKP as its partner in Turkey in the second half of the 2000s also played a role in advocating for the AKP. The AKP was still consistently pro-European at the time, even if it made some criticism of Brussels from time to time. The Turkish opposition, and in particular the Kemalist Republican People's Party, was strongly Eurosceptic. By now, the positions of both Turkish political sides have been reversed. At the same time, it must not be forgotten that the moderate Islamists of the AKP at the time still believed that the political representation of the religious masses could not be successful in Turkey based on Atatürk principles, and that the EU would extend Western freedoms to this social stratum. As the AKP strengthened and was able to dominate the Turkish political landscape, it no longer needed the EU and moved away from it.

Another well-known Western organization that issued an opinion on banning the AKP was the Parliamentary Assembly of the Council of Europe. The Council of Europe has taken the classic liberal Western position that all political ideologies in Europe, including Turkey, should be allowed to operate freely. However, it is worth noting that this opinion is quite surprising to a Turkish citizen. The Turks see that this excessive liberalism led to the fall of Europe and provoked the break out of World War II. The various fascist, Nazi or even communist parties operated in Europe without any restrictions, leading to the establishment of dictatorships and a subsequent disaster. The average Turkish person is more willing to ban parties that pose a threat to the nation and the state than to really face an unavoidable situation. (Albayrak Coskun, 2008:141)

The Venice Commission linked to the Council of Europe had a report in 1999 outlining to the Council of Europe member states what principles they should apply in party laws and how they should regulate the banning of parties. According to this document, the democratic party systems that have developed in Europe today are an integral part of our common cultural heritage, and the free functioning of parties can only guarantee the survival of this political tradition. This position of the Venice Commission reflects the Western idea that freedom of expression and assembly belongs to

political parties and that it is in the common interest of all European democracies to guarantee it. In only one case does the Commission see an exception if the rule of law is respected. In a situation where a country is operating democratically and an extremist party is abusing the opportunities offered by democracy, and poses a threat to democracy itself, it can be banned. However, the AKP in 2007-2008 was still difficult to call extreme. Rather, it could only pose a threat to the secular system of the state, and Erdogan and his mates themselves did not question democracy as a system. (Sevinc, 2008:260)

The American politicians have been much more cautious than their European counterparts. They sought to strike a balance and emphasized the importance of both democratic freedoms and the respect for the secular state. In other words, the United States did not try to interfere in Turkish internal affairs, but gave its views to the understanding of both parties. The Turkish Constitutional Court had to learn from this that the US would not be happy with the ban of the AKP, but also called on the AKP to respect the ideals of a secular state. (Dagi, 2008:3)

Conclusion

The initiators of the lawsuit against the AKP did not reckon with one thing, and this explains why the party survived this political and legal attack on it. The Kemalists assumed that much of Turkish society thought like them and that believers practicing their religion were a minority. However, they did not think that this minority is large enough and that its influence is growing, almost half of Turkish society, even if they do not live a faithful life, agrees with some views of the AKP, supports some of its steps, and there are those who are still in solidarity with the party even if they are not voted for them. This carelessness, as it was related to the religious-secular opposition, led to an even greater division of the Turkish people. (Jenkins, 2008:2)

The legal process to ban the AKP also created a regional political divide in Turkey, too. The prestige of the Constitutional Court has increased in the eyes of the urban and secular middle-class population of the large cities in the western part of the country. They increasingly saw the organization as a tool that swayed over their secular conception of the state alongside a portion of the military and state bureaucracy. In contrast, the more rural population in central and eastern Turkey began to cultivate increasingly hostile sentiment towards the constitutional court, which also shook confidence in the entire judicial system. These domestic political divisions persisted until the 2010 constitutional amendment, when the Constitutional Court ceased to play the role of checks and balances and increasingly took action to defend Erdogan's policies. (Bali, 2015:306)

The lawsuit to ban the AKP has ended with the clear success of Prime Minister Recep Tayyip Erdogan. Although some members of the Constitutional Court voted to ban the party, they eventually escaped with only a minor sentence. Behind the party, a fairly serious group of financial backers had already emerged, so the fact that the AKP had been deprived of a year of state support could not make the party impossible to operate. However, the court decision infuriated Erdogan, who, on the one hand, swore vengeance and, on the other, tried his best to strengthen his own political positions. Erdogan also made sure that he was not the only one to decide to reorganize the Constitutional Court and oust the old lawyers associated with the Kemalist elite, but to arrange for an amendment to the constitution to decide on the changes. This amendment was eventually put to a referendum, in which a fairly high proportion, 58% of the voters, decided to transform the supreme Turkish judicial forum. The new constitutional court, which was eventually voted by the people, was filled by Erdogan with his own people. (Akca, 2018:18)

The final decision of the Constitutional Court, i.e. not to abolish the AKP, put the Turkish opposition, especially the Republican People's Party, in a very difficult position, as they had to realize that their resources against the government were becoming increasingly scarce. The 2007 military memorandum and the 2008 court ruling proved that the social positions of the Kemalists had been extremely weakened. They had no choice but to defeat the AKP and Erdogan on the political stage. (Dagi, 2008:9) The nearly one decade and a half since then proves that the Turkish opposition has only partially grown up for this task.

As his opponents' playing field narrowed, the AKP's political position strengthened spectacularly after the lawsuit. The conservative circle of entrepreneurs, the business association close to the AKP, MUSIAD, has provided more financial support to the AKP than before, and is still an important financial support for Erdogan. Also due to the lawsuit, conservative Anatolian citizens who were morally and financially ready to support the AKP became stronger and more self-conscious. (Gumuscu and Sert, 2009:966) At the same time, a structural political transformation has taken place in Turkey, as a result of which the AKP has built a stable electoral base around itself, which was only partially eroded even by the early 2020s.

For certain observers, it was not clear that the AKP was relatively strengthened by surviving the lawsuit to ban it. Moreover, in 2009 there was even a rumor that another court case was being prepared against the Turkish ruling party. (Castaldo, 2018:12) After successfully defending itself, the AKP commenced a spectacular counterattack. After the ruling party's politicians learned that the party could continue to operate, they themselves

filed lawsuits against secular personalities, including military officers, who had previously sought to defeat the AKP themselves. In the social debates of these lawsuits, the opposition proved to be quite weak, the Republican People's Party was unable to defend its own people. This has further increased the AKP's room for maneuver, both legally and politically, and has increasingly pushed the CHP into the background. The AKP besides strengthening its own position, was also undermining the opportunities of its opponents „by increasingly framing the necessity of judicial reform as a struggle against “oligarchic rule,” the party implemented policies that incrementally weakened judicial independence and undermined horizontal accountability.” (Somer, 2019:51)

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