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Parliamentary crisis

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Published in:
Open Democracy

Publication date:
2011

Document Version
Peer reviewed version

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Cengiz, F., & Hoffmann, L. (2011). Parliamentary crisis: Imprisoned politicians in Turkey. *Open Democracy*, 1-4.

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Parliamentary crisis: imprisoned politicians in Turkey

Firat Cengiz, 08th July 2011

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There are deep divisions between the political forces in the new parliament that are not being worked out through democratic parliamentary debate. All of a sudden, the parliament is in crisis
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In our recent [article](#) [8] on the June 2011 national elections in Turkey, we argued that the versatility and open-mindedness of many first time parliamentarians might lead to a strong and effective political opposition in the Turkish Parliament; something that every parliamentary democracy should cherish. Yet, barely a fortnight later, the new parliament is facing a major crisis surrounding nine newly-elected opposition MPs who are currently held in jail.

Specifically, two MPs of the social democratic CHP (Republican People's Party) are imprisoned under the [Ergenekon](#) [9] investigation into an alleged coup attempt; six MPs of the Kurdish BDP (Peace and Democracy Party) were arrested under the [KCK](#) [10] operation for belonging to the urban wing of the Kurdish Workers' Party, PKK; and finally, one MP from the right-wing MHP (Nationalist Action Party) is held under the [Balyoz](#) [11] investigation, yet another investigation into an alleged coup. Of these nine MPs, only one has been convicted in a court of law: Hatip Dicle, elected to Parliament for the BDP, is serving a twenty-month sentence for 'being a member of a terrorist organisation'. The verdict against him was based on his 2007 public statement, pronouncing that 'if the Turkish military does not stop its operations against Kurds, the PKK could legitimately rely on its right to self-defence' ([source in Turkish](#) [12]).

Immediately after the votes were counted, the Turkish Board of Elections stripped Dicle of his parliamentary mandate due to his conviction. Because the BDP had fielded independent candidates rather than a national party list to circumvent the 10% electoral threshold, his vacated seat was allocated to the governing AKP (Justice and Development Party) rather than another BDP member. Turkish lower courts have so far prosecuted four of the remaining eight jailed MPs and refused to release any of them. The courts' decisions on the remaining four MPs are still pending, but it appears highly unlikely that the verdicts will differ from those in the previous cases.

Following the court rulings the current crisis escalated when the remaining 30 BDP MPs decided to boycott all parliamentary activities - including the inaugural session - until measures are taken to allow their imprisoned MPs to assume their seats. MPs from the CHP, while being present in Parliament, refused to take their inaugural oaths. Under the Turkish Constitution, it is not certain whether this will prevent the CHP members from participating in parliamentary sessions, but it certainly illustrates the deep division between the political forces in the new parliament.

This is not the first time that the Turkish electorate has voted imprisoned or convicted candidates into office; nor is it the first time that the courts had to deal with such a situation. In 1998 the current prime minister, Mr Erdoğan, then mayor of Istanbul, was briefly imprisoned and barred from politics



for five years after he had recited several verses from a nationalist poem that prosecutors deemed to be a call for sharia rule. When the AKP won power in 2002 it was only after the CHP agreed to aid the AKP to approve constitutional tweaks that Mr Erdoğan was permitted to stand in a by-election. Erdoğan thus became an eligible candidate and won the Siirt rerun to become Turkish Prime Minister, an office that he has held ever since. In 2007, another such crisis was circumvented when lower courts released Sebahat Tuncel (another BDP MP) who was imprisoned (but not convicted) for being a member of the PKK at the time of her election.

The deviation of lower courts in the present cases from previous legal practise calls for an explanation. This is especially so since the crimes the eight jailed MPs are accused of are not covered by parliamentary immunity – meaning that a release from prison, allowing them to fulfil their political mandate, would in no way circumvent any on-going or future investigation into their alleged terrorist activities. In addition, the credibility of the entire *Ergenekon* investigation has since come into [question](#) [9], due to various procedural inconsistencies. Moreover, in contrast to similar situations in the past, a political solution to the current problem, as was achieved for Erdoğan in 2002 seems unlikely. The AKP appears unwilling to cooperate with the other parliamentary groups on this issue. Specifically, Prime Minister Erdoğan publicly announced that the Turkish Parliament would continue its work with or without the opposition.

Fostered by its 1997 EU candidanship Turkey has come a long way in establishing a sustainable democracy based on majoritarian institutions. This progress is most visible in the shift of power from the military to political institutions. Nevertheless, the recent crisis implies that not all political forces benefited equally from this progress, and there are still significant barriers on the way to equal democratic representation for some parts of the society. Tellingly, Hatip Dicle himself was among the four first ‘openly’ Kurdish MPs of Turkey. Elected to parliament in 1991, he was arrested in 1994 and spent more than a decade in prison for treason because he attempted to take his inaugural oath in Kurdish. Dicle’s case resulted in Turkey’s [conviction](#) [13] before the European Court of Human Rights (ECHR). Although existing ECHR case-law does not provide a perfect template, the Court’s doctrines of [proportionality](#) [14] and [legitimate expectations](#) [15] strongly suggest that Turkey may face further convictions over the current crisis. The fact that all parliamentary candidates (including Hatip Dicle) were pre-approved by the Turkish Board of Elections further indicates that the Turkish courts are currently navigating in precarious legal waters.

Still, this crisis poses an opportunity for Turkey to face her political past and tackle much needed reforms of democratic governance. The AKP government has won the election on the promise for substantial constitutional reforms. In principle, such a legal overhaul is to be applauded.

Turkey’s current constitution is a direct product of the 1980 military coup and, despite various amendments, there is general agreement that the country needs major reforms to acquire a new, contemporary constitution. However, fundamental constitutional changes should reflect a broad societal consensus rather than party politics. This is arguably the main reason why democracies with written constitutions usually require super-majorities in parliament for constitutional amendments. The fact that the AKP did not achieve an outright two-third majority in the recent elections should thus bode well for the anticipated reform process. Under the current distribution of seats, the AKP is short of three votes only to reach the required three-fifth majority to introduce a constitutional amendment through referendum. Nevertheless, it is crucial, in our opinion, that all political forces are party to finding a new constitutional basis upon which the Turkish Republic can build its future. The legitimacy of a constitution drafted without the contribution of two opposition parties will be severely questioned both inside and outside of Turkey. This will especially be so, since the issues related to the current crisis, such as the exceptionally high national electoral hurdle, lack of constitutional guarantees against trivial and excessive arrests as well as a strong commitment to freedom of expression, must rank on the top of the reform list.

But, of course, the burden to find a solution does not only lie with the governing party. The CHP has recently taken initiatives to create international pressure to resolve the situation that include a [motion](#) [16] by the Socialist International Council stating that barring legally elected MPs from performing their parliamentary duties is a violation of international human rights law. Instead, the CHP and BDP should work on a more concrete plan to overcome the crisis. Their boycott of Parliament is not sustainable in the long-term; and it does not serve their, the electorate’s or the



Turkish people's interest. Rather the BDP and CHP should use the crisis as an opportunity for concrete agenda-setting, thus, forcing the government to implement the promised reforms through effective opposition in the Parliament. These reforms are much needed not only to resolve the on-going crisis but at the same time to provide a solid basis for the future of Turkish democracy.

Country or region: Turkey

Topics: Civil society

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[12] <http://www.internethaber.com/hangi-vekil-neyle-suclaniyor-foto-galerisi-15986-p4.htm>

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