

Turkey's Constitutional Court Back to Old Tricks

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On March 9, 2023, Turkey's Constitutional Court (TCC) reversed its January 5, 2023 decision to "precautionarily" block the accounts of the Peoples' Democratic Party (HDP) in the lawsuit demanding HDP's closure. The injunction against the third largest party in the parliament, which was issued in clear violation of the Constitution, and the decision to lift the injunction rendered shortly afterwards, took place against the backdrop of [severe judicial harassment](#) against HDP members, the upcoming parliamentary and presidential elections on May 14, 2023 and the ongoing humanitarian crisis and state of emergency rule in the ten provinces impacted by the devastating earthquakes of last February. This blog post will discuss the incompatibility of the TCC decision and the Turkish legal framework on party closure with the Turkish Constitution and the European Convention on Human Rights (ECHR).

The Constitution, the Political Parties Law, and the ECHR

The HDP closure case is not the first example of political party closure cases in Turkey, nor is it the first case against parties that focus on the democratic resolution of the Kurdish question. Since its establishment in 1962, the TCC has ruled to dissolve a total of 25 political parties, seven of which were pro-Kurdish parties.

The [Constitution](#) defines political parties as indispensable elements of democracy and regulates the forms and conditions for establishing and dissolving political parties. After the 2001 constitutional amendment, the criterion of "becoming a center" of banned actions (such as those against the indivisible integrity of the state and the Republic's democratic and secular principles) was added. Accordingly, the dissolution of political parties is only possible if the political party engages in banned actions *and* becomes the center of these acts through continuous and various engagements of the party organs. The purpose of this amendment was to limit the discretionary power of the TCC and to make it more difficult for the court to shut down a party.

Despite attempts to democratize the 1982 coup d'état Constitution, the prohibitions on political parties in the [Law on Political Parties](#) (SPK), which is the basis of Turkish law for political party closure judgments, remain in place. For example, Article 81 stipulates that political parties cannot assert the existence of minorities in the country, cannot engage in activities aimed at protecting, developing or spreading languages and cultures other than the Turkish language or culture, and cannot use languages other than Turkish in their statutes or propaganda. The term "prohibited language" is noteworthy since neither the Constitution nor the SPK specify which languages are prohibited.

Not only is the SPK unconstitutional but also the TCC judgments fail to meet the relevant standards of the European Court of Human Rights (ECtHR). In political party closure cases, the ECtHR examines the dissolution of a political party within the framework of democratic principles and emphasizes the element of violence for the restriction of the freedom of association under Article 11 of the ECHR ([DTP v. Turkey](#), para. 92). According to the ECtHR, the exceptions permitting interference should be interpreted narrowly in the case of political parties. Limitations imposed by national authorities must be proportionate even if they pursue legitimate aims and should be subject to strict scrutiny by independent ([DTP v. Turkey](#), para. 46).

The last political party closure decision in Turkey to be reviewed by the ECtHR was that of the [Party for a Democratic Society \(DTP\)](#), which also focused on the Kurdish question. In its assessment of the TCC's decision to dissolve the DTP, the ECtHR observed that the DTP was the main legally established political group in Turkey advocating for a peaceful resolution of the Kurdish question. According to the Court, the TCC's decision to dissolve DTP despite its peaceful and democratic methods prevents the emergence of democratic and peaceful political programs and leads to a broader interpretation of state interference in political parties. Citing the [2009 Opinion of the Venice Commission](#), which states that the Constitution and the SPK "together form a system which as a whole is incompatible with Article 11 of the ECHR as interpreted by the ECtHR and the criteria adopted in 1999 by the Venice Commission," the ECtHR concluded that the closure of the DTP constituted a violation of Article 11 ECHR ([DTP v. Turkey](#), para.111).

The Closure Case Against the HDP

The DTP and HDP closure indictments contain almost identical accusations. Although the Constitution explicitly recognizes the supremacy of the Convention and the ECtHR, Turkish judiciary persistently fails to apply the Court's criteria in political party dissolution cases. In other words, the state continues its repressive and prohibitive tradition in political party closure decisions.

With the indictment dated March 17, 2021 claiming that HDP has become a center of actions against the indivisible integrity of the state with its country and nation, the Chief Public Prosecutor's Office of the Court of Cassation requested from the TCC to permanently shut down HDP; to impose a political ban against 451 party members and executives, including former co-chairs Figen Yüksekda# and Selahattin Demirta#; and to cut off the party's treasury aid and precautionarily block its accounts. The TCC unanimously accepted the indictment on June 21, 2021.

The prosecution claimed that HDP had organic ties with the Kurdistan Worker's Party (PKK) and that 69 party members had made the party the center of terrorist acts through their words, actions and activities, presenting as evidence statements made at HDP rallies and interviews given to the press. All the activities presented as grounds for closure are within the scope of political activity and freedom of expression of the party members and executives for whom political bans are requested. This has been confirmed by the ECtHR with the [Selahattin Demirta# v. Turkey](#) and [Yüksekda# #eno#lu Ve Di#erleri v. Turkey](#) judgments which found an Article 18 violation and ordered the immediate release of Demirta# and Yüksekda#

from prison. Similar to the [Kavala v. Turkey](#) case, which led to [infringement proceedings](#) against Turkey by the Council of Europe, the local court has refused to implement these ECtHR judgments.

The Suspension of HDP's Bank Accounts and the Subsequent Reversal

The request for an injunction was not based on a constitutional provision. According to Article 69 of the Constitution, instead of permanent dissolution, the TCC "may rule the concerned party to be deprived of state aid wholly or in part with respect to intensity of the actions brought before the court." Thus, deprivation of state aid is envisaged in the Constitution as a sanction, not a precautionary measure.

Furthermore, according to Article 149 of the Constitution, a two-thirds majority is required for the TCC to decide on sanctions under Article 69. Seven members, including the President of the TCC Zühtü Arslan, voted against the precautionary block on the bank account containing state aid paid or to be paid to HDP. In other words, the TCC adopted a decision constitutionally requiring a two-thirds majority with eight votes for and seven votes against. The TCC's 2023 injunction decision was thus procedurally unconstitutional, in addition to abusing a sanction as a precautionary measure.

In the end, the TCC changed track and lifted the block. It is unclear what exactly prompted this decision, but it is noteworthy that the reversal comes shortly after the earthquake and at the very beginning of a critical election period which may very well end 21 years of AKP rule. Meanwhile, Erdoğan [reportedly](#) called and scolded TCC judges who voted to lift the injunction. Shortly thereafter, the TCC [rejected](#) HDP's request to postpone the verbal plea date set for April 11 until after the May 14 elections. In response, HDP announced that it will not present a defense as its timing constituted state interference into free and fair elections. On April 11, the TCC recorded that HDP would not submit a defense and proceeded with handing over the case to the rapporteur to prepare a report on the merits. To mitigate any risk arising from the closure case, HDP has [decided](#) to run under the Green Left Party banner in the elections.

Concluding Remarks

It remains to be seen whether HDP will be added to the long list of pro-Kurdish parties that were shut down by the Turkish state. Such a decision will be yet another violation of freedom of association under the ECHR restricting the development of political programs for the democratic resolution of the Kurdish question. Even though fast-paced political developments make it impossible to predict any results, one thing is for certain: The closure of HDP will deepen the crisis of democracy in Turkey. Taken together with authoritarian practices, the economic crisis and government's incompetence in the aftermath of the earthquake, the closure case against the second largest opposition party in the parliament is not only a matter of concern for HDP members and voters, but for all the peoples of Turkey.

Disclosure: The author is part of the defense team in the HDP closure case.

