

# **Protecting Politicians or Protecting Democracy?**

## ***Parliamentary Immunity and Party Closure in the Run-Up to Local Elections in Turkey***

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### **KHRP Briefing Paper**

**Last Updated: 23/03/09<sup>1</sup>**

#### **Summary**

The recent attempt to close down Turkey's pro-European ruling *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) for supposed anti-secular activities, which was defeated by a single vote in a decision handed down by Constitutional Court judges in July 2008, stirred controversy and grabbed headlines around the world. However, as this paper will illustrate, the relentless pursuit of parties and politicians by unelected proponents of a strongly secularist, nationalist ideology is far from being a new phenomenon in Turkey and remains an area of deep concern in the run-up to local elections set to take place at the end of March. Besides parties like the AKP with religious associations, others that are particularly at risk include those that represent Kurdish interests. The formation of a Democratic Society Party (DTP) group in the Turkish parliament following the July 2007 general elections gave a pro-Kurdish party representation in this forum for the first time in 14 years. Shortly afterwards, however, prosecutors filed a number of requests to have the parliamentary immunity of DTP MPs lifted, in order to pave the way for legal proceedings against them. A party closure case was then launched against the DTP which remains ongoing at the time of writing. Parliamentary immunity ought to protect the electorate, allowing the candidates they have selected to talk

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<sup>1</sup> This is an updated version of a briefing paper originally published in July 2008, in the run-up to the Constitutional Court ruling in the closure case against the AKP.

openly and to adopt policies without fear of prosecution, and is therefore a practice in most democratic countries. The systematic harassment and persecution of elected representatives by unelected state agents underscores the need for a thorough overhaul of mechanisms in Turkey governing the banning of parties and prosecutions of MPs.

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## Introduction

The confrontation between state institutions and elected politicians in Turkey has historically been played out both in the courts and at the barrel of a gun in a number of military coups. The heavy-handed military response to the nomination of Abdullah Gül as a presidential candidate in April 2007<sup>2</sup>, although ultimately unsuccessful, was a reminder that the latter threat has not receded. Since then, cases before the Constitutional Court to close the Democratic Society Party (DTP) and Justice and Development Party (AKP) and ban their members from politics (filed in November 2007 and March 2008 respectively) have marked an escalation in this confrontation. The case against the AKP was defeated by a narrowly-balanced Constitutional Court decision on 30 July 2008, but the Court nonetheless halved treasury funding to the party as a 'serious warning' over its supposed anti-secular activities. The parallel

proceedings against the DTP continue to hang over the party to this day. These cases have important implications for the development of human rights and democratic governance in Turkey. Shutting down the parties would also entail lifting the immunity of party members and could pave the way for prosecutions against them.

The opening of EU accession negotiations with Turkey in 2004 has focused international attention on this awkward balance of power and highlighted to the international community the structural flaws that perpetuate this confrontation, to the detriment of democratic values. Two features of Turkey's political and legal system play a central role in the current political crisis: the system of parliamentary immunity from prosecution while in office and the conditions for its removal, and the recurrent closure of political parties by the country's Constitutional Court.

Most democracies provide members of the legislature with some degree of immunity from prosecution. This is to allow parliamentarians to express themselves and to adopt policies without fear of prosecution. Without this type of protection MPs could be pressured to change their political behaviour, for example in terms of their engagement in debates or their policy orientation. Systems of parliamentary immunity operate differently across the world. They

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<sup>2</sup> On 27 April 2007, the Turkish Armed Forces issued a memorandum regarding the presidential nominations, containing such thinly veiled threats as 'those who are opposed to Great Leader Mustafa Kemal Atatürk's understanding "How happy is the one who says I am a Turk" are enemies of the Republic of Turkey and will remain so. The Turkish Armed Forces maintain their sound determination to carry out their duties stemming from laws to protect the unchangeable characteristics of the Republic of Turkey. Their loyalty to this determination is absolute.' For further excerpts, see <http://news.bbc.co.uk/1/hi/world/europe/6602775.stm> (last accessed 17 July 2008).

are intended to balance the need to protect electoral choice with the need to ensure that members of parliament are held accountable for criminal behaviour. The efficacy of any system of allowing or removing immunity therefore depends on the political context - for example, the types of prosecutions that politicians are likely to face which immunity would be expected to prevent from going ahead.

The system of party closure in Turkey is presented as being a legal safeguard designed to protect national interests over politicians' own interests, in cases of conflict between the two. However 'national interests' are defined in this context by the 1982 Constitution and its interpretation by the 11 judges of the Constitutional Court. The degree of power that the system affords to an unelected body, the Constitutional Court, is unprecedented in similar democratic countries.

Given the sympathy of European and American governments for the pro-EU AKP, the case against that party in particular cast Turkey's legal framework, which sanctions the interference of the judiciary and other non-elected actors in the political process, under the critical scrutiny of international politicians and press. Though the immediate threat to the AKP has now passed – with the party allowed to continue operating, albeit with restrictions on its funding – it is important that the

issues that it raised should not be allowed to slip down the agenda. In view of the upcoming municipal elections in late March 2009 and the ongoing moves against the DTP and its members, Turkey's political framework and especially the mechanisms that it provides for party closure and the prosecution of MPs must remain under close international scrutiny.

This paper will first explain the historical context surrounding recent steps in Turkey to shut down political parties and remove the parliamentary immunity of their members. It will then examine the concept of parliamentary immunity, including its varied application in different contexts around the world. The legal provisions for parliamentary immunity and its removal in Turkey will be explained, and the recent cases against the AKP and DTP will be looked at in more detail. Finally, the paper will highlight the threat that the recent cases against parliamentarians and the parties to which they belong pose to human rights and democracy in Turkey.

### Historical context

Following the general election in Turkey in July 2007, it appeared that an unprecedented political spectrum had been allowed to emerge. Since the establishment of the secular, nationalist Turkish state by Kemal Atatürk in 1923 and the first multi-party elections in 1950, no parties

with religious or Kurdish associations (like the AKP and DTP respectively) have retained their elected position in parliament without a swift challenge, whether military or judicial.

Such parties have powerful enemies. To certain actors in Turkey, Atatürk's founding principles of secularism and 'Turkishness' bar any other expressions of identity in the political sphere, including religious or Kurdish identity. Underlying the ideological challenge is a practical one. Defence of Turkish secularism and ethnic identity often belies a more pragmatic defence of the political status quo, with significant power invested in military and 'deep-state' actors.

Smaller parties have effectively been excluded from representation in parliament due to Article 33 of Turkey's 1983 Electoral Law (Law No. 2839), which requires a 10 per cent threshold for a party to enter parliament. This has historically affected parties who have advocated for Kurdish causes and drawn most of their support from the Kurdish regions. The DTP and some other political groups attempted to circumvent the threshold and overcome this challenge to previous pro-Kurdish parties in the July 2007 parliamentary elections by nominating independent candidates to stand on their behalf. Overall, 26 independent candidates were elected, 20 of whom subsequently formed a political group

representing the DTP in parliament. Just a few months later, the Constitutional Court accepted the opening of a case of party closure against the DTP following the submission of an indictment by Turkey's Chief Prosecutor Abdurrahman Yalçınkaya in November 2007, which accused the party of threatening Turkey's national integrity.

Politicians and parties representing the Kurds and Kurdish aspirations have always faced systematic persecution in Turkey. Every party that has sought to articulate Kurdish concerns in a peaceful, democratic forum has contended with efforts by the establishment to restrict their activities, threaten their members and ultimately disband the party. The People's Labour Party (HEP), regarded as the first Kurdish party, was banned from the 1991 general election, although it succeeded in sending 22 delegates to parliament under the banner of the Social Democratic Populist Party (SHP). In 1993 the HEP was closed down, having been accused of fomenting Kurdish separatism by the Constitutional Court.

Outraged at the SHP's failure to respond to the Newroz killings in 1992, 18 former HEP delegates resigned to form the Freedom and Democracy Party (ÖZDEP), which was in turn closed by the Constitutional Court in 1993 on similar allegations. Other left-wing

parties, including the Labour Party (İP, 1997), the Socialist Party (SP, 1992), and the Socialist Unity Party (1995), all went on to face closure primarily because of their culture and language rights agenda.

The decision of the Constitutional Court to shut down the Democratic Party (DEP), a successor to the HEP and ÖZDEP, in 1994 was a particularly important instance of the politically-motivated use of party closure and removal of parliamentary immunity against Kurdish politicians. Having been stripped of their parliamentary immunity following the closure of the party, a number of DEP MPs were subsequently arrested and imprisoned. Five of them - Selim Sadak, Ahmet Türk, Leyla Zana, Mehmet Hatip Dicle and Orhan Doğan - were sentenced to 15 years' imprisonment because of their public expression of their Kurdish identity.<sup>3</sup>

The European Court of Human Rights (ECtHR) later found that the DEP MPs had been denied the right to a fair trial, a violation of Article 6 of the European Convention on

Human Rights (ECHR), and that the deprivation of their parliamentary mandate was in breach of the right to free elections under Article 3 of Protocol 1 to the ECHR.<sup>4</sup> The Court confirmed that the right to free elections guarantees not only the right to stand for election in the first place, but also the right to continue to exercise the democratic mandate after one is elected. This highlights the importance of guaranteeing the freedom of association necessary for political parties to carry out their political activities, and the freedom of expression necessary for MPs to exercise the mandate bestowed upon them by the electorate, in order to ensure a functioning democracy. Though these are not unrestricted rights, the Court nevertheless found that Turkey had acted disproportionately and in a way that was **'incompatible with the right to be elected and to exercise a political mandate'**.<sup>5</sup> The ECtHR also found violations of the ECHR in a number of other party closure cases in Turkey, including those involving the closure of ÖZDEP<sup>6</sup> and the United Communist Party of Turkey (TBKP).<sup>7</sup>

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<sup>3</sup> See KHRP Case Report, *Sadak & others v. Turkey: The Right to Free Elections* (KHRP, London, August 2002), p. 9. The State Security Court also sentenced MP Sedat Yurttas to seven and a half years for 'aiding and abetting an armed group', under Article 169 of the Penal Code. Another MP, Selim Sakik, was sentenced to three years for 'separatist propaganda' under Article 8 of law 3713 on anti-terrorism. The Court of Appeal later annulled the convictions of Yurttas and Türk, on the grounds that they had only violated Article 8 of the anti-terrorism law, and ordered their provisional release.

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<sup>4</sup> ECtHR, Appl. Nos. 29900/96, 29901/96, 29902/96 and 29903/96, *Sadak and Others v. Turkey (No. 1)*, judgment dated 17 July 2001.

<sup>5</sup> *Sadak and Others v. Turkey (25144/95), (26149/95) to (26154/95), (27100/95), (27101/95)* judgement of 11 June 2002, para. 40.

<sup>6</sup> ECtHR, Appl. no. 23885/94, *Democracy Party (ÖZDEP) v. Turkey*, judgment dated 8 December 1999.

<sup>7</sup> ECtHR, Appl. no. 19392/92, *United Communist Party of Turkey and Others v. Turkey*, judgment dated 30 January 1998.

Pro-Kurdish parties have continued to face harassment more recently in Turkey, where the expression and defence of Kurdish identity is still conflated with separatism and terrorism. In March 2003, the Constitutional Court unanimously ordered the permanent closure of the pro-Kurdish People's Democracy Party (HADEP). Following a sustained campaign of harassment<sup>8</sup>, HADEP was charged with supporting the PKK and committing separatist acts, and 46 HADEP leaders were prohibited from participating in political life for five years. Out of this party's closure rose the Democratic People's Party (DEHAP), which was itself closed in 2003. The DTP was subsequently established in 2005 as a successor to DEHAP.

This systematic campaign to keep specific groups out of politics through party closures, the removal of parliamentary immunity and subsequent moves to prosecute MPs has also affected parties with left-wing<sup>9</sup> and religious associations. The prosecutor who filed a motion for party closure against the AKP in March 2008 was the same official who launched the latest closure case

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<sup>8</sup> The Human Rights Association of Turkey (IHD) reports that 41 HADEP offices were raided and 393 formal arrests of HADEP members were made in 2002. The European Commission has also noted the 'continuing harassment' of HADEP members by the authorities.

<sup>9</sup> See, for example, the 1991 closure of the TBKP, dealt with on page 6 of this briefing paper.

against the DTP under discussion in this paper. Previous Islamic political parties, often regarded as predecessors to the AKP, have also faced a pattern of party closure. For example, the Welfare Party (Refah Partisi, RP) was shut down in 1998 and the Virtue Party (Fazilet Partisi, FP) was closed in 2001. In 1999 Recep Tayyip Erdoğan, the current AKP Prime Minister who was at the time leader of the FP, was imprisoned for four months on charges of conducting Islamist activities.

The current cases against the AKP and DTP, then, occur against the background of a historical pattern of legal measures against parties and politicians with a Kurdish or Islamic message. The legal and political system in Turkey has allowed a continued campaign against particular political targets, which has been condemned by international bodies such as the ECtHR, and which undermines democracy and political stability in Turkey.

### The concept of parliamentary immunity

As stated earlier in this paper, in the context of multi-party elections and the separation of powers parliamentary immunity is a legal mechanism designed to safeguard certain freedoms of elected parliamentarians, which are essential for them to carry out their



democratic mandate. In particular, freedom of expression and freedom of association are necessary for parliamentarians to represent the concerns and interests of those who elected them, without fear of prosecution.

Any system of parliamentary immunity is made more complex, however, by the need to strike a balance between protecting the free exercise of the mandate upon which a politician has been elected on the one hand, and upholding the rule of law and penalising criminal behaviour on the other. The standard of an effective system must be its protection of the democratic system, not politicians as individuals.

Most democracies employ some model of parliamentary immunity. The narrower model, known as *parliamentary non-accountability*, protects MPs' parliamentary speech, debate and votes. This model is used in the US and Great Britain, and does not apply to MPs' activities outside their role as parliamentarians. The broader model, *parliamentary inviolability*, includes protection from prosecution both inside and outside their roles as parliamentarians and is the most common.<sup>10</sup>

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<sup>10</sup> See DAIdeas Democracy Briefs, *Parliamentary Immunity and Democracy Development*, Issue No. 2, August 2007; and Koçan, G & Wigley, S, 'Democracy and the Politics of Parliamentary Immunity in Turkey', *New Perspectives on Turkey*, no. 33 (2005): 121-143, p. 124.

In 2001, the European Centre for Parliamentary Research and Documentation conducted a study on parliamentary immunity in the then 15 member states of the EU. Their findings showed that three member states - the Netherlands, the United Kingdom and Ireland - have adopted a narrower scope of immunity, whereas the majority apply inviolability. The procedure for waiving parliamentary immunity is generally set out in regulations for parliamentary rules of procedure. Corruption charges are the basis of most requests to waive immunity in Europe. In parts of the developing world, high levels of political corruption have led to disenchantment with parliamentary immunity. Findings from a comparative case study carried out in Armenia, Ukraine and Guatemala show that popular support for parliamentary immunity is very low due to abuse of immunity by parliamentarians.<sup>11</sup>

This underscores the importance of examining the contexts in which immunity is removed in order to assess the success of the system in protecting democracy. When removal is targeted at popular opposition parties or representatives of particular groups of society, it

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<sup>11</sup> United States Agency for International Development, *Parliamentary Immunity Brief: A Summary of Case Studies of Armenia, Ukraine and Guatemala*, February 2006, available at <http://www.gopacnetwork.org/Docs/Global/Brief%20on%20parliamentary%20immunity.pdf> (last accessed 5 February 2008).

must be ensured that the system has not allowed for politically-motivated immunity waivers and convictions to take place. It is worth noting that removal of immunity does not represent the only method of holding politicians to account. Democracy entails that parliamentarians answer primarily to the electorate, and elections effectively serve judgement on the words and actions of a politician while in office.

#### Turkey's system of parliamentary immunity and party closure

Turkey has adopted the broader system of parliamentary immunity, based on the French model, which prohibits the arrest, interrogation, detention or trial of a parliamentarian for offences alleged to have taken place either before or after election. Revisions of Turkey's 1921 Constitution in 1924, 1961 and 1982 all upheld this model.

According to Article 83 of the current Turkish Constitution, in place since 1982, the removal of parliamentary immunity is decided by the Turkish Grand National Assembly, which is composed of 550 elected MPs. Firstly, the Parliamentary Speaker must forward a request to remove an MP's immunity to the Joint Justice-Constitutional Committee<sup>12</sup>, whose

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<sup>12</sup> This is composed of members of the Parliamentary Justice and Constitutional Committees.

Chairperson draws lots to choose a five member preparatory committee which then compiles a report on the case. Having considered the report, the Joint Committee makes a recommendation to parliament. When the recommendation is to defer court proceedings until the end of the parliamentarian's term, the report is read to parliament and deputies have ten days to submit objections in writing, without which the Joint Committee's decision is final. In cases where the Joint Committee recommends removal of immunity and where this is challenged by the deputy in question, a majority vote is conducted in the parliament.<sup>13</sup> A minimum of a third of MPs must be present and a quarter must vote. The deputy concerned can also defend himself before the preparatory committee, the Joint Committee and the parliament. There is also the right of appeal to the Constitutional Court within seven days, on the basis of inconsistency with parliamentary procedures, the Constitution, or the law.<sup>14</sup>

However, in Turkey's complex political system a number of mechanisms exist which allow unelected figures to lift the

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<sup>13</sup> Ergun Özbudun, 'Constitutional Debates on Parliamentary Inviolability in Turkey', in *European Constitutional Law Review*, 2005 Vol.1 p. 272–280.

<sup>14</sup> According to Article 85 of Turkey's Constitution. No appeals filed under the 1982 Constitution have ever been found to be admissible by the Constitutional Court.

immunity of a parliamentarian without the requirement of a vote by the National Assembly to sanction the procedure. One such mechanism, which has been used frequently in Turkey's recent history, is the power of the Constitutional Court to dissolve political parties and ban deputies from politics, thus entailing the removal of their immunity. The dissolution of political parties is decided by the Constitutional Court after the filing of a suit by the office of the Public Prosecutor, as prescribed by Article 69 of Turkey's Constitution. To date, 24 political parties have been closed down by the Constitutional Court since it was established in 1963.

The automatic removal of parliamentary immunity in cases where parties are closed and members are banned from politics also exposes parliamentarians to the threat of politically-motivated convictions. This paper has already described the case of a number of DEP MPs who were arrested and imprisoned following the closure of the party by the Constitutional Court in 1994, in a process later found to have violated the ECHR<sup>15</sup>.

The closure of political parties is further facilitated by Law No. 2820 'On Political Parties', issued by the National Security Council in April 1983, just prior to the implementation of the 1982

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<sup>15</sup> *Sadak & Others vs Turkey*. See page 5-6 of this briefing paper.

Constitution, to give further powers to the military establishment to restrict political expression in the run-up to the 1983 National Assembly elections. This law targets parties predominantly supported by the electorate in the Kurdish regions by requiring each party to establish organisations in at least half the country's provinces. As well as serving as a deterrent to participation in elections, the Law on Political Parties is also employed as a threat against elected parties. The recent moves to close the AKP, for example, involved claims that it had violated this law's prohibition of parties based on class, race, language or religion.

Another legal instrument allowing for the removal of immunity without a parliamentary vote is found in Article 83 of the 1982 Constitution. This article states that where an MP has been investigated prior to his or her election on the basis of Article 14 of the Constitution – which prohibits **'violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic'** - this investigation may continue after the MP in question has taken a seat in parliament.<sup>16</sup> In

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<sup>16</sup> Article 83/2 of the Constitution of Turkey 1982 stipulates that, 'A deputy who is alleged to have committed an offence before or after election, shall not be arrested, interrogated, detained or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in the act of committing a crime punishable by a heavy

practice, the scope of interpretation of Article 14 paves the way for arbitrary and politically motivated prosecutions of political figures.

Due to criticism from the EU, some amendments to the system of party closure in Turkey took place in 2001, in the run-up to the opening of accession negotiations. The simple majority of judges required for closure by the Constitutional Court was increased to three-fifths. Following the amendments, a party must also be shown to have become 'the centre of' the actions of which it has been accused in order to merit closure. However, although these changes were ostensibly intended to rule out personal and political motivations for party closure, in practice they have proved insufficient. They did nothing to block the recent indictments against AKP and DTP officials, for example, despite the fact that these proceedings have been criticised for simply relying on excerpts lifted selectively from speeches made over a number of years.

While the kinds of legal procedures described thus far pose a serious threat to democracy in Turkey, it should of course be noted that even these have frequently been swept aside by the direct intervention of

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penalty and in cases subject to Article 14 of the Constitution if an investigation has been initiated before the election. However, in such situations the competent authority shall notify the Turkish Grand National Assembly immediately and directly.'

the military in politics. Article 35 of the Turkish military's internal regulation, which stipulates that the army's duty is 'to watch and protect the Turkish homeland and Turkish Republic as defined by the Constitution', was used as the legal ground for coups in 1960, 1971 and 1980. Following such takeovers, the military have not shied away from simply ignoring the provisions for parliamentary immunity and enacting legal proceedings against MPs regardless of the protections theoretically afforded to them. After the 1960 coup members of the ruling Democratic Party (DP) were tried on the basis of parliamentary speeches given while they were in power, leading to the execution of four members of the party, including its leader and the deposed Prime Minister Adnan Menderes.

The underlying threat of the legal and extra-legal precedents set out in this section provides unelected actors inappropriate power over elected deputies in Turkey, with party closure and removal of immunity used to enforce a political programme that has not been chosen by the electorate. Furthermore, the frequency of prosecutions of MPs and party closure cases has resulted in an unstable political sphere, with parties forced to re-form with different actors, structure and name, while maintaining a similar political outlook, as supported by the electorate's wishes. This unsustainable situation deprives the electorate of clear political choices

and the ability to remove the mandate of their elected representatives, further fomenting political apathy and frustration.

### The case against the AKP

The motion of party closure against the AKP was filed by the Chief Public Prosecutor on 14 March 2008. The indictment called for 38 AKP MPs, including Prime Minister Recep Tayyip Erdoğan and a further 33 party officials, to be banned from politics for five years. Referring to Articles 68 and 69 of the Constitution, as well as the Law on Political Parties, the indictment accused the AKP of attempting to undermine the principle of secularism in Turkey.

On 30 April the AKP presented its preliminary defence to the Constitutional Court, despite expectations that the party might ask for an extension to the 2 May deadline. The defence, which was 98 pages long with three files of appendices, criticised the content and basis of evidence in the indictment. The prosecutor and AKP members gave oral presentations to the Court on 1 July and 3 July respectively. On the 30 July the Court delivered its final verdict, with the AKP narrowly escaping a ban by a single vote. The Court requires a vote of seven members for a ban to be affected. However, in addition to the six members who voted for the

party's closure, four members described the AKP as demonstrating 'anti-secular' activities,<sup>17</sup> a judgement which resulted in the decision to halve the party's financial assistance from the state.

The backdrop to the AKP case was an ongoing battle between the ruling party and establishment structures including the Constitutional Court. On 5 June the Court overturned a law passed by parliament to relax the ban on wearing headscarves in Turkey's universities. This symbolic issue was viewed as both a victory for the secular establishment and an indicator of the Court's eventual judgment in the closure case. In spring 2008 Erdoğan and other AKP leaders had discussed introducing constitutional reforms to limit the Court's ability to close parties, but later dropped them citing a wish not to create further tensions, given the already fraught political climate.

### The case against the DTP

Since the period immediately following the July 2007 general election, DTP deputies have had to contend with numerous investigations and attempts to remove their parliamentary immunity. One such case was launched after the party sent a delegation to northern Iraq in late

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<sup>17</sup> 'Turkey's court decides not to close AKP, urges unity and compromise,' *Hurriyet Daily News*, 30 July 2008.

October 2007 to bring back eight Turkish soldiers who had been captured by the PKK. On 9 November an investigation was instigated against three members of the delegation, Aysel Tuğluk, Osman Özçelik and Fatma Kurtulan, along with a formal request to the Turkish parliament that their immunity be removed.<sup>18</sup> A decision not to revoke their immunity was reached in December 2007, a ruling attributed by some to the AKP's desire to continue warm relations with the EU.<sup>19</sup>

In early January 2008, the head of the DTP's parliamentary group Ahmet Türk also faced investigation in connection with a statement he made after the DTP was the only political party in parliament not invited to an official reception organised by the army's General Chief of Staff. Following the snub, Türk had said, 'They all talk about separatism. Now it is clear to see who the real separatist is.' He was accused of violating Article 301/2 of the Penal Code, which prohibits '**openly insulting the military institutions of the state**' and the prosecutor requested the removal of his immunity.<sup>20</sup> At the time of writing, this request is still pending.

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<sup>18</sup> 'Week in Review', Turkish Daily News, 10 November 2007.

<sup>19</sup> 'AKP not to remove DTP deputies' immunities,' *Hurriyet Daily News*, 27 December 2007.

<sup>20</sup> 'Police report prepared to revoke Türk's immunity', *Today's Zaman*, 3 January 2008.

Cases have also continued against DTP members Sebahat Tuncel, Emine Ayna and Fatma Kurtulan, who face charges of 'praising of crime and a criminal'. In a ruling in February 2008, Ankara Heavy Penal Court no. 11 acceded to a prosecution request to press ahead with investigating the three MPs despite their parliamentary immunity. In this instance Articles 14 and 83 of the Constitution were utilised to allow the proceedings to continue, based on the argument that the actions that led to the charge had taken place before they became MPs.<sup>21</sup>

In February 2009, a court in Diyarbakir sentenced DTP deputy Aysel Tuğluk to one and a half years' imprisonment for 'spreading the propaganda of an outlawed terrorist group', relating to a speech delivered in May 2006.<sup>22</sup> In the same month, controversy ensued when DTP leader Türk delivered part of speech before the Turkish Parliament in Kurdish. Parliament Speaker Koksal Toptan said that while the move was a violation of Turkey's constitution, Türk would not be prosecuted. However, there were calls for this from some quarters. An official military spokesperson publicly stated that it was 'natural' for judicial bodies to 'take action

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<sup>21</sup> See Firat News Agency, [www.firatnews.com](http://www.firatnews.com), 7 February 2008.

<sup>22</sup> *Today's Zaman*, 'Court sentences DTP deputy over speech,' 6 February 2009.

against those who contravene the law.'<sup>23</sup>

The closure case against the DTP itself was launched by Chief Prosecutor Abdurrahman Yalçınkaya on 16 November 2007. The indictment prepared by the prosecutor also requested that the Court ban eight DTP MPs and 213 other members of the DTP from politics for five years, which would entail the removal of their immunity, paving the way for possible prosecutions. Referring to statements by party members as evidence, the indictment claims that the DTP has violated Article 68 of the Turkish Constitution, which prohibits political parties from challenging the indivisible integrity of the territory and nation of Turkey.<sup>24</sup>

On 11 December 2007 the DTP received the indictment to close the party from the Constitutional Court.

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<sup>23</sup> Today's Zaman, 'DTP's Türk defends parliamentary speech in Kurdish,' 28 February 2009.

<sup>24</sup> Article 68 of the Turkish Constitution stipulates that, 'The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime....' Article 69 of the Turkish Constitution sets out the procedure by which the Constitutional Court may dissolve political parties which violate Article 68.

After the DTP had introduced its preliminary defence to the Court, a party deputy for Şırnak province, Hasip Kaplan, told journalists that this defence criticised Turkey's system for allowing recurrent party closure and claimed that Articles 78, 80, 81, 101 and 103 of the Law on Political Parties are unconstitutional. 'Turkey should no longer be a cemetery of closed parties,' Kaplan said.<sup>25</sup>

The DTP submitted its full written defence on 12 June 2008. More than 150 pages long, it stated that 'the closure of the DTP with this indictment serves to tell Kurds that they should not look for a solution through politics'. On 24 June Yalçınkaya presented a verbal statement to the court arguing for the closure of the DTP. Subsequent stages in the case were due to include the preparation of a report on the merits of the case by a rapporteur assigned by the Constitutional Court; an opportunity for the chief prosecutor to submit further evidence and for the DTP to submit additional defence material to the rapporteurs; and the distribution of the rapporteur's report to Court members. Finally, Constitutional Court Chairman Hasim Kilic will set a date for the court to start hearing the merits of the case.

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<sup>25</sup> 'DTP wants expansion of closure inquiry in its defense', Turkish Daily News, 12 February 2008.

According to the Turkish Constitution, at least seven of the 11 members of the court would then have to vote in favor of closing the party in order for this to come about. At the time of writing, local media report that the Constitutional Court is still far from reaching a final decision in the DTP case.

### Impact on democracy and human rights

Turkey's system of party closure and removal of parliamentary immunity impacts on every citizen of Turkey by fomenting sustained political instability, and by restricting the democratic mandate of their representatives and thereby the full exercise of electoral choice. Moreover, political parties that are perceived as a threat to the secular, ethnically homogenous Kemalist ideology are particularly vulnerable to the power afforded to non-elected bodies of the state by this system. Parliamentary immunity must not be used to protect the legislators, but to protect the legislative institution on behalf of the people. Similarly, closure of political parties must not become a tool of democratic restriction.

Turkey has obligations under international law to protect human rights and democracy. As a signatory to the ECtHR Turkey must abide by the ECHR, and is obliged to implement judgements of the Court, such as that of *Sadak and Others v.*

*Turkey*.<sup>26</sup> By finding a breach of the right to free elections (Article 3 of Protocol 1 to ECHR) in this case, the ECtHR established that the system of party closure and immunity waiver in Turkey violated the human right to participation in effective democratic governance. Turkey is also committed to protect this right through ratification of other international legal treaties such as the International Covenant on Civil and Political Rights (ICCPR).<sup>27</sup>

As a candidate to accede to the EU, Turkey has a particular interest in implementing common European standards. Further, continued negotiations for accession depend upon Turkey's compliance with specific democratic and human rights standards embodied in the Copenhagen Criteria. Following the launch of the closure case against the AKP, EU Commissioner for Enlargement Olli Rehn warned Turkey that European countries turn to the ballot box and parliament, not the courts, to resolve such issues and the EU warned that the accession process would be under severe threat should the case succeed. Following its eventual collapse of the case, the EU welcomed the outcome but continued to express dissatisfaction with the circumstances which had allowed it

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<sup>26</sup> ECtHR, Appl. Nos. 29900/96, 29901/96, 29902/96 and 29903/96, *Sadak and Others v. Turkey (No. 1)*, judgment dated 17 July 2001. See page 5-6 of this briefing paper.

<sup>27</sup> The ICCPR was ratified by Turkey in December 2003.



to come about.<sup>28</sup> The proceedings against the ruling party have highlighted the implications of Turkey's system of party closure and immunity waivers to the international community. Examining the procedures and historical application of party closure and immunity waivers puts both this case, and the case against the DTP, in their wider context: that is, sustained efforts to subvert the will of the electorate, on the part of unelected powers whose own conception of what is best for Turkey is grounded in a narrow, secular and ethnically-exclusive identity.

### Recommendations

In order to protect democratic governance and the exercise of human rights, Turkey should urgently:

- Note the Council of Europe's June 2008 resolution underlining its concern regarding party closure cases in Turkey, and in particular its legislative recommendation that 'a full revision of the 1982 Constitution which, despite repeated revisions, still bears the marks of the 1980 military coup d'état, and a comprehensive review of the law on political parties are required in order to bring these

texts fully into line with European standards.'<sup>29</sup>

- Review the power of the Chief Public Prosecutor to initiate party closure cases. This power should be made subject to the legislative body, in order to prevent politically motivated cases of party closure.
- Bring the legal basis of party closure into line with commonly-accepted European standards, allowing for dissolution of political parties only on the basis of the use of violence or disturbance of civil peace.
- Restore parliamentary oversight of the removal of parliamentary immunity, in order to prohibit the targeting of politicians by non-elected bodies, and engage in open debate about legislative reform necessary to prevent the obstruction of effective democratic governance and the right of Turkey's citizens to fully participate in this process.
- Develop a constitutional procedure to allow for the legislative body to propose, discuss and implement amendments to the Constitution according to its democratically-

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<sup>28</sup> Reuters, 'EU welcomes Turkish court ruling on AK party,' 30 July 2008.

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<sup>29</sup> Resolution 1622 of the Parliamentary Assembly of the Council of Europe 26 June 2008, [http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1622.htm#P16\\_125](http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1622.htm#P16_125) (last accessed 24 July 2008).

elected mandate. The current power of the Constitutional Court to close political parties privileges the Court's interpretation of articles of the Constitution over those of the electorate.



11 Guilford Street  
London WC1N 1DH  
Tel: +44 (0)207 4053835  
Fax: +44 (0)207 4049088  
Email: [khrp@khrp.org](mailto:khrp@khrp.org)

The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.