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Does the pro-Kurdish HDP stand a chance of fair trial in Turkey?



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On March 17, the Turkish Court of Cassation's chief public prosecutor filed a lawsuit with the Turkish Constitutional Court for the closure of the pro-Kurdish opposition Peoples' Democratic Party (HDP). The indictment was prepared by Bekir Şahin, who was hand-picked for the post by President Recep Tayyip Erdoğan about nine months ago. Erdoğan appointed Şahin by ignoring the outcome of the election, despite the prosecutor finishing fourth in the election for the post.

The chief public prosecutor in the indictment accuses HDP members of, "aiming to disrupt and destroy the unbreakable unity of the state (together) with its nation with their statements and actions". He claims, "[HDP] has never sided with Turkey on any national issue, on the contrary chosen to side with those

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against Turkey.”(See). Şahin asked the top court to proscribe HDP and ban 689 Kurdish politicians from political life for five years (See).

Under the Turkish constitution, the constitutional court has exclusive jurisdiction over cases of closure and dissolution of political parties, like the one filed against the HDP. But there remains a question as to whether the HDP will have a fair trial.

The Turkish Constitutional Court and its composition

The ruling Justice and Development Party (AKP) and its leader Erdoğan have always given special importance to controlling the judiciary. As a consequence, they have changed the Constitutional Court’s structure twice, in 2010 and 2017. Currently, the court consists of 15 judges, three of which were elected by parliament. The other 12 judges have been either selected or appointed by the president. (See) So while only three judges are elected by parliament, is it likely parliament is under the control of the same political party to which the president belongs. As a result, a single political party could dominate the country’s highest court.

So, Turkey has a system where twelve of the incumbent judges were selected or appointed either by former president Abdullah Gül or by the incumbent president Erdoğan, and both are founders of the ruling AKP. The remaining three judges were appointed by parliament, which has been under AKP control since 2002. These appointments were based on political opinions and personal loyalty. This is particularly significant in connection with President Erdoğan’s recent appointments. For instance, Yıldız Seferinoğlu, who was appointed in 2019 had been the member of parliament with the AKP between 2015 and 2018. Selahaddin Menteş and Basri Bağcı were deputy ministers of justice of the AKP government before being appointed to the court The latest appointment of Erdogan, Irfan Fidan is a slap in

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the face to the court and Strasbourg, as several of his decisions, made to please Erdoğan, were found to be in breach of the constitution and the European Court of Human Rights (ECHR).

Justice	Appointed / Elected by
Zühtü Arslan, Hasan Tahsin Gökcan, Engin Yıldırım, Muammer Topal, Mehmet Emin Kuz	Abdullah Gül
Hicabi Dursun	Parliament on 6 October 2010
Celal Mümtaz Akıncı	Parliament on 13 October 2010
Rıdvan Güleç	Parliament on 13 March 2015
Recai Akyel, Yusuf Şevki Hakyemez, Yıldız Seferinoğlu, Selahaddin Menteş, Basri Bağcı, Kadir Özkaya, İrfan Fidan	Recep Tayyip Erdoğan

As a result of these legal changes and political appointments, the court has aligned its decisions with the executive, namely the will of Erdoğan. This pattern has been more significant since the attempted coup of 2016. That is to say, the AKP has transformed the court into an institution, which is neither independent nor impartial, but an executive-controlled court. As a consequence, AKP's hand-picked appointees will try the case against the HDP, which was filed by Erdoğan's hand-picked prosecutor.

A possible outcome of the case

Erdoğan has long accused the HDP of not distancing itself from the outlawed Kurdistan Workers' Party (PKK). His political ally, Devlet Bahçeli, has gone further to equate the HDP with the PKK. After the closure case, Bahçeli said the HDP was "a criminal organization disguised in a political cloak. Its closure without it

being allowed to reopen under another name, is a duty of honor...".
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So, it would not be surprising to see political pressure set towards the court during the trial.

European Parliament's standing rapporteur on Turkey, Nacho Sánchez Amor, told Ahval that "nobody has a chance for a fair trial in Turkey if there is a political will behind the accusation."

According to Nate Schenkkan, the director of research strategy at Freedom House, "it's hard to imagine the HDP getting a fair trial," in light of the state of the judiciary in Turkey after the purges that followed the coup attempt.

"The decision to open such a case is itself deeply political, and the case will undoubtedly also be decided at the political, not the legal, level," Schenkkan said. "None of the facts that are being litigated here are any different from what they were when the HDP was opened and permitted to run in multiple national and local elections."

It is hard to predict the outcome of the HDP case. It will depend on many factors, both domestic and international. However, regardless of the outcome, it is clear that the case will not be considered in accordance with the law and facts.

Just as was the case with the initiation of the HDP closure case, its result will depend upon the political interest and the state of power of Erdoğan, which is far removed from the notion of the right to a fair trial.

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