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## AK Party Survives Closure Case: What Is Next?

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İHSAN DAĞI\*

The Constitutional Court ruled not to close down the AK Party, relieving Turkey from an unprecedented level of political uncertainty, social and economic turmoil, and potential chaos. Instead, the court chose to keep the ruling party under close scrutiny by declaring it “a focal point of anti-secular activities,” and imposing financial measures.

Leaving the closure case behind the ruling party is expected to be more restrained, and to act responsibly as demonstrated during the proceedings of the case, while trying to strengthen its democratic and secular credentials through a reform policy in keeping with the EU accession process.

The verdict may also have some ramifications on the opposition. It highlights the limits of the Constitutional Court to be a focal point of opposition against the AK Party. Having lost their hope that the AK Party could be toppled by the court or by pressure from the military, the opposition parties, especially the CHP, may be forced now to develop more down-to-earth policies instead of relaying on a mere secularist discourse against the AK Party within the political sphere.

The Constitutional Court decided not to close down the AK Party, relieving Turkey from an unprecedented level of political uncertainty, social and economic turmoil, and potential chaos. Instead, the court, as the bastion of the Kemalist/secularist establishment, chose to keep the ruling party under close scrutiny by declaring it “a focal point of anti-secular activities,” and imposing financial measures.

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\* Professor of International Relations at the Middle East Technical University. [dagi@metu.edu.tr](mailto:dagi@metu.edu.tr)

The end of the closure case, though dispersed a significant degree of uncertainties raises numerous questions: What does this verdict mean? How will the AK Party respond? Will the verdict paralyze the party, preventing it from deepening political reforms – or prompt a new wave of reforms? What will be the repercussions of the verdict on the opposition parties? Will it contribute to a reconciliation in Turkish politics or will it worsen political tension and division over the way “secularism” is understood and debated?

### **The background**

On March 14 2008, the chief prosecutor of the Court of Appeals asked the Constitutional Court to close the ruling AK Party on the grounds that it had become a “center of anti-secular activities,” and also demanded a five-year political ban for 71 current and former members of the AK Party, including prime minister Recep Tayyip Erdoğan and president Abdullah Gül.

The indictment, compiled from media reports and Google searches, brought together statements of party officers on various political issues. It concluded that

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the AK Party intends to erect an Islamic state by undoing Turkey’s secular characteristics. The hardest evidence cited by the public prosecutor in the indictment was a constitutional amendment initiated by both the AK Party and the Nationalist Action Party which was approved by 411 out of 550 members

of parliament. The amended articles of the constitution were intended to lift the ban on the usage of the headscarf in universities by broadening the constitutional principles of equality and the right to education.

Filing a case against the ruling party caused strong international reactions, particularly from the European Union. EU officials warned that closure of the AK Party could result in the suspension of accession negotiations with Turkey. European Commission President José Manuel Barroso stressed that the closure of the AK Party was unacceptable in the context of EU values and principles and that it would jeopardize the whole accession process. EU Commissioner for Enlargement Olli Rehn said that “in a normal European democracy, political issues are debated in parliament and decided in the ballot box, not in the courtroom.”

For the EU, despite its occasional criticism, the AK Party was the only partner to do business with, given the reluctance of other political parties in Turkey to undertake political reforms. After all, the EU’s decision to commence accession negotiations with Turkey under the AK Party government in October 2005, after acknowledging that Turkey “sufficiently met” the Copenhagen political criteria, had clearly constituted an approval of the AK Party’s performance in



democratization and Europeanization, not Islamization, as opposed to the accusation of the chief prosecutor.

The United States, in contrast, was more cautious in its public statements against the case. Nevertheless US officials, praising both democracy and secularism, stressed that democratic processes should be respected and that voters should decide on the future of a political party in a democratic country.

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In short, international reactions to the closure case were not favorable. Statements by government officials, commentaries by representatives of global finance groups as well as

editorials and opinion pieces in newspapers and magazines all warned that closure would cause chaos not only in Turkey’s domestic politics and economy but also in its foreign relations, particularly with the West.

### **Managing the closure case**

The opening of the case no doubt came as a shock to the AK Party; its initial response was furious. Party leader Erdoğan described the case as a shameful assault not on the AK Party but on the people’s will and democracy itself. At the time, many expected that the party would choose not to be part of the proceedings by not presenting a defense to the Constitutional Court in an attempt to question the legitimacy of the whole process.

Holding a clear parliamentary majority, the party had some other options at hand with which to respond to the closure case. There were suggestions that the party could change the articles in the constitution, on its own or in cooperation with other political parties in the parliament, concerning the procedure on party closures, making it more difficult to close political parties. But such steps would have been regarded as an attempt to change the rules after the proceedings had already been started.

The ruling party eventually responded to the closure case with immaculate restraint, despite its initial strong reactions. While in the first weeks of the case the chief prosecutor and the judicial bureaucracy in general were strongly criticized for contemplating a “judicial coup” against the ruling AK Party, later a strategy of not countering the court or the prosecutor was adopted. The defense strategy was geared to reduce political tension as the case proceeded by portraying the party non-confrontational and even appeasing. The government continued to function as if it were not facing a closure threat. This strategy of indifference to the closure



case gave the impression that the party was acting responsibly, which in turn increased pressure on the court to behave responsibly too.

In short the party was careful not to give any new excuse for the proponents of its closure. This acquiescence led to speculations that the AK Party had struck a deal with secularist forces, especially the military.

### **Handling the court process**

On 30 April the AK Party submitted its preliminary defense, arguing that during its rule not only had democracy been broadened but commitment to the principle of secularism had spread to wider social groups. The case for closure, the party claimed, was purely motivated by political reasons and based on subjective presumptions with no grounding in positive law.

Before waiting until the deadline for submitting a final defense, the AK Party, in a move to speed up the process, gave its 98-page final defense to the court on 16 June 2008. It strongly denied accusations that it had become a “focal point of anti-secular activities” as the prosecutor claimed, arguing that the prosecutor’s indictment was shaped by ideological and political motives rather than legitimate legal concerns. It also questioned the prosecutor’s understanding of the concepts of democracy and secularism, which was out of line with the universally accepted understanding of these concepts.

The defense claimed that the “indictment was filled with fictitious accusations based on speculative assumptions regarding the future, ignoring the performance of the ruling party.” It also warned that banning the AK Party would violate the European Convention of Human Rights and of the freedom of association.

On July 3, the AK Party gave an oral defense, continuing to present the case as a political proceeding instead of a legal one, and highlighting ideological context of the chief prosecutor’s accusations.

On July 17, the rapporteur submitted his report recommending the court not to close the AK Party and disband its leaders, for the party had not become a center of anti-secular activities according to article 68 of the constitution and the political parties law. The rapporteur underlined that the statements by AK party officials that had been presented as evidence by the chief prosecutor should be regarded part and parcel of freedom of expression in a democratic country. The political activities and statements of party members can not be the bases of party closure, the rapporteur continued, based on the European Convention of Human Rights and the Venetian criteria that rule out closure of political parties except when they use or encourage violence for political purposes. The rapporteur also challenged the core evidence (specifically the constitutional amendments lifting the ban on headscarf at universities) in the indictment by arguing that amending the



constitution is not the purview of a solitary political party but of the parliament; thus, the AK Party's support for the constitutional amendment lifting the ban at universities cannot be used as evidence for its being the focal point of anti-secular activities.

Completing the legal procedure, the court meeting on July 30 to examine the case, issued a compromised verdict: it ruled against the closure of the AK Party but

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decided to impose a financial penalty on the grounds that the party indeed became a focal point for anti-secular activities. The verdict on the closure was close: 6 out of 11 members voted for closure, only one vote short of closing

the AK Party according to the constitution that requires a 3/5 majority decision ratio for party closures. Most observers conceded that the strategy of restraint adopted by the AK Party had paid off.

### **Explaining the verdict**

As the time arrived to pass judgment on the case, enormous pressure had been exerted upon the court from both domestic and international actors not to cause further political and economic uncertainty by closing down the party.

Even those who had initially favored closing the party, in time, turned hesitant. It became evident that closing down the party would not finish off the AK Party or its popular leader, Erdoğan; on the contrary, victimization of the party and its leader could trigger even larger support, as had happened in the past. Moreover, it was observed that the closure case could not have the desired impact on the party's parliamentary group which had been expected to split under the pressure of the indictment, and to search for alternative political alignments in response to intensified pressures emanating from the closure case. Yet the closure threat did not cause a weakening of public support for either the AK Party or its leader, Erdoğan. The party remained ever united and intact. So, it appeared that shutting down the party would not serve to eliminate it from the Turkish political scene. Thus in the final weeks, the likelihood of a compromise decision by the court was uttered more frequently.

As Haşim Kılıç, the president of the court, mentioned while announcing the verdict, the members of the court could not remain indifferent to Turkey's political, social and economic circumstances. The court could not undertake the burden of pushing the country into deep political and economic chaos. Growing economic anxiety, recent terrorist attacks in Istanbul claiming the lives of 17 civilians and 3 police officers, the controversial Ergenekon investigation into a



terror network that penetrated into the state structure including the military, were the immediate concerns from which the members of the court could not escape while making up their minds about the case.

Moreover, the coincidence of the closure case and the meeting of the high military council where the new chief of general staff and two commanders of military

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branches were to be determined was also touted as a factor influencing the court’s decision. The schedule for promotions and appointments of top commanders in the council meeting to be presided over by the prime minister added to the uncertainties not only about political cadres but also about the

new command chain in the military should the party be closed down and the prime minister subjected to a political ban. It is also worth noting that an unexpected meeting in late June of premier Erdoğan and General İrfan Basbuğ, the designated chief of general staff, increased speculations that the AK Party would not be closed by the court.

Although they regarded it as intervention in the earlier stages of the proceedings, the members of the court were unlikely to remain indifferent to vocal opposition of international actors to the closure of the AK Party. The possible isolation of Turkey in the west and in its region as a result of the court’s verdict increased the likelihood for the non-closure of the party.

As a result, the strategy of restraint pursued by the AK Party, coupled with circumstances at the domestic and international levels resulted in the survival of the party and its leader, raising the question “what is next?”

### **Will the AK Party re-embrace reform and the EU?**

The verdict of the court was welcomed by the AK Party. Erdoğan declared that Turkey was saved from the shame of closing down a political party that received almost half of the votes. But he insisted that his party had never been and would never be a focal point of anti-secular activities, implicitly criticizing the second leg of the court’s decision.

The verdict appears likely to boost the pro-reform policies that marked the AK Party’s first three years in power. If the party once again realizes that its survival and political supremacy requires further democratic openings, then it will commence a new period of reforms including a new constitution brokered with opposition parties and civil society organizations. The AK Party needs to remember that in its first years it had pursued reform policies on the EU track. This had served to disperse fears and suspicions about the AK Party concerning its



commitment to democracy and secularism. If the ruling party, in this new era, commits itself to continue with democratic reforms it is certain that it will revitalize the EU accession process. Just two hours after the court's verdict, Premier Erdoğan underlined that Turkey would continue its "road to EU membership." This is an indication that in the post-verdict period the AK Party government will embrace the EU accession as a means to forge wider social and political coalitions, thus reducing the anxieties of some liberal, democratic and pro-Western segments of society.

It is obvious that the court's decision not to shut down the AK Party comes as a relief for the EU, especially for those who harbor favorable views about Turkey. Relieved by non-closure, the EU is now expected to press for reforms.

The success of a new wave of reforms, however, is contingent on two conditions: first, the government should change its attitude towards the accession negotiations, abandoning the view that EU-Turkey relations are on the right course anyway as the accession negotiations continue. This complacency, however benign, is certainly not enough to energize Turkey's EU accession. The matter is not one of wading through the technicalities involving negotiating chapters but of visualizing Turkey as a full EU member in a short time span, and working strategically and assertively to realize this target.

Second, the EU and its member countries need to deliver on certain issues as well. Maintaining a membership perspective is essential for Turkey to stimulate political and economic reforms. The recent French decision to introduce a referendum requirement for new member countries is certainly not a positive incentive for Turkey. The bottom line is that a reformist government in Ankara should not be left alone to face domestic opponents of the EU and the AK Party's attendant reform policies. With that said, with the closure case resolved it will now be easier for the AK Party government to support renewed talks in Cyprus between Talat and Hristofias who will be meeting on September 3 for substantial settlement negotiations. If the AK Party revives the EU accession process there should be no reason to avoid settlement of the Cyprus question.

### **Is another case for closure likely?**

The verdict that defines the AK Party as a focal point of anti-secularist activities, it is argued, may serve to restrain the AK Party's reformist inclinations. Certainly it is a knife's edge situation. Having to carry the label 'anti-secular' might make the AK Party extra-cautious, preventing it from taking bold political decisions in domestic or foreign policy matters. Although this speculation holds some truth, it is unrealistic to expect that such an unrivaled party and its leader would surrender to the bureaucratic centers who wish to define the boundaries of the political. A submissive attitude that leaves no room for political maneuvering for the ruling party that has shown itself capable of re-organizing the political sphere to escape



from the tutelary attempts of bureaucratic elite is very unlikely to expect. On the contrary, the non-closure decision will boost the confidence of the party cadres to claim “agency” in political processes.

Having said that, one can also expect Premier Erdoğan to make some political gesture to placate opposition directed at his government. The strong rhetoric hitherto seen in Erdoğan’s speeches may be watered down in an attempt to appear sensitive to the expectations for reconciliation.

Still, the bureaucratic elite hold some leverage against the AK Party. Theoretically speaking, the chief prosecutor has the authority to lodge another closure case with the Constitutional Court any time. Given the fact that the AK Party has already

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been judged guilty of becoming a focal point for anti-secular activities, a second case may be fatal. But the chief prosecutor cannot use the same evidence already presented in this case. Thus he has to wait some time for new evidence to accrue. Meanwhile the AK Party will

be more careful to avoid any renewed attempts to effect its closure.

In this context the party is likely to work to improve its centrist and democrat credentials in the post-closure case period. It is thus expected that the AK Party’s evolution into a center-right political party will continue. The upcoming local elections in March 2009 will be an opportunity for the AK Party to prove its continuing popular support and its ability to reach diverse social and political constituents. The AK Party is expected to mobilize all its strength to get even a better result than the 47 percent it achieved in the July 2007 elections. The fact that the AK Party survived the closure threat is sure to boost a renewed confidence and determination on the part of the party ranks, which may be turned into a new electoral victory in March, making it very difficult for the chief prosecutor to open another closure case for some time.

### **The end of opposing the AK Party via military and judiciary?**

The verdict may also have some ramifications on the opposition to the AK Party. In the absence of a strong political opposition to the ruling party some have looked to the military and the judiciary to be the center of the anti-AK Party block. These two institutions partly played just such a role, which they legitimized by means of references to protecting the secular character of the state. The invitation of these non-political forces into the political arena, however, has not resulted in the expected results as exemplified in the case of presidential election and the latest closure case against the AK Party. It is worth remembering that the military



remained silent during the proceedings of the closure case. The chief of general staff, General Büyükanıt, even refrained from making a comment after the verdict suggesting that the military had drawn its lessons from past interferences that had backfired politically.

The Constitutional Court has also emerged as an institution capable of blocking the legislative activities of the AK Party government, but as the latest verdict of the court indicates, it is incapable of eliminating the AK Party altogether as a political force. The non-closure verdict therefore highlights the limits of the Constitutional Court to be a focal point of opposition against the AK Party.

What is left is to pursue opposition to the AK Party by political means in the political realm. Having lost their hope that the AK Party could be toppled by the

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court or by pressure from the military, the opposition parties, especially the CHP, may be forced now to develop more creative policies against the AK Party within the political sphere. The verdict is likely

to increase pressure on the CHP to transform itself into a viable political alternative to the ruling party. It may even prompt a search for an alternative to the CHP and its leader Deniz Baykal among more democratic elements within the party and in the ranks of left wing politics.

### **Is the secularism debate passé?**

It is expected that the secularism debate will remain at the center stage of Turkish politics. Nevertheless, although the court appears to have provided new ammunition to the opponents of the AK Party who base their opposition on secularism, the verdict does not introduce any fresh arguments to the debate. If the CHP continues to focus its opposition on secularism this will only serve to reinforce the current political division, a division that favors the AK Party as reflected in the July 2007 elections. People who are concerned that the discourse of ‘saving secularism’ is used to limit popular power, national will and democracy will continue to rally behind the AK Party.

The decision of the court may therefore be the beginning of rethinking secularism in a moderate way. The opposition block, satisfied with the fact that the court has declared the AK Party anti-secularist, may move on to challenge the ruling party on more concrete social and economic issues. Such an approach is more likely to beat the AK Party in coming elections, as it has already been proven that relying on the single issue of secularism is ineffective in bringing down the AK Party government.



In this respect, it is hoped that the court verdict may lead to a process of rethinking secularism even by the radical secularist block which eventually may come to embrace a “moderate secularism” in an attempt to address the concerns of religious people of Turkey, a kind of rediscovery of the late Bülent Ecevit’s notion of “secularism that is respectful to religion.”

### **Conclusion**

In the post-verdict period, Turkish politics may enter into a process of normalization which could bring about temporary relief. Such relief would be welcome even for a short period, after the tension and turmoil which has lasted for over a year. The ruling party is expected to be more restrained, and to act responsibly as demonstrated during the proceedings of the closure case, while building up its democratic and secular credentials through a reform policy in keeping with the EU accession process. Relieved from the closure threat, the ruling party may also reassert itself even more forcefully as a regional player taking an active role in negotiations with Iran, normalization in Iraq and bargaining between Israel and Syria.

The new political season after the summer break will be opened with a new election agenda, namely the approaching local elections of March 2009. This means that the political heat in Turkey will not terminate; on the contrary, it will increase. But so long as political competition is confined to the political realm and does not involve non-political actors such as the military and the judiciary, it will be part and parcel of a normalization in Turkish politics.

