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RETHINKING TURKEY AND EUROPE'S FUTURE: HAVE EUROPEAN INSTITUTIONS BECOME AN OBSTACLE TO ERDOĞAN'S POLITICS?

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On 20 November 2018, the European Court of Human Rights (ECHR) ordered Turkey to release former co-chair of the pro-Kurdish Peoples' Democratic Party (HDP) Selahattin Demirtaş from prison. President Erdoğan's government had jailed Demirtaş in 2016 on terrorism charges.

Erdoğan, who himself appealed to the ECHR several times in the late 1990s and early 2000s, accused the ECHR of "outright love for terrorism"¹, deploying a rhetoric that he has frequently used to blame "foreign powers" for any turmoil in his country. This is obviously another attempt to present himself as independent and beyond any foreign influence, but a closer look at the judgement is necessary to understand how Erdoğan's accusation is problematic.

Numerous courts charged Demirtaş with terrorist-related offences following his arrest in 2016. In September 2018, he was sentenced to four years and eight months in prison over public speeches that he delivered at Newroz celebrations in 2013, while another HDP deputy Sırrı Süreyya Önder received three years and six months. Since the elections in June 2015 and the subsequent breakdown of the peace process with the outlawed Kurdistan Workers' Party (PKK), the Justice and Development Party (AKP) government has frequently accused HDP members of being supporters or members of the PKK, with a view to criminalising the HDP.

The PKK has been on the European Union (EU) terror list since 2002, so anyone who can be associated with this party can be brought before a court, even outside of Turkey. But a ruling² from the European General Court (EGC) on 15 November 2018 revealed that the PKK had wrongfully been listed as a terrorist organisation between 2014 and 2017.

¹ *Erdoğan'dan AİHM'nin Demirtaş kararına tepki: Düpedüz terörist sevicilik*; Milliyet, November 22, 2018.

² *European Association of Lawyers for Democracy & World Human Rights: Recent decisions of the European Courts concerning Turkey*; November 21, 2018.

The peace negotiations between the PKK and the Turkish government that began in 2012 were the main reason for the EGC's ruling, alongside PKK leader Abdullah Öcalan's call on his supporters to lay down their arms. Öcalan's call was made on the same Newroz celebration day in March 2013 on which Demirtaş and Önder delivered the inculcating speeches.

Despite the previous EGC judgement, the ECHR decided that 'there had been sufficient information in the criminal case file to satisfy an objective observer that Mr Demirtaş might have committed at least some of the offences for which he had been prosecuted', and concluded that 'he could be said to have been arrested and detained on "reasonable suspicion" of having committed a criminal offence'.

As long as the PKK remains on the EU terror list, European courts can hardly judge any accusations made by the Turkish government against oppositional Kurdish politicians independently. It remains in the hands of the Turkish government to criminalise political activists for Kurdish rights, simply by accusing them of PKK connections or affiliations.

However, the ECHR decision that the extensions of Demirtaş's detention 'had pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate', and that this represented 'a violation of Article 18 in conjunction with Article 5 § 3'³ was a novelty and regarded as having been a success by oppositional lawyers in Turkey. However, limiting its condemnations only to the extensions of Demirtaş's detention without dealing with the political accusations or the detention itself was a serious weakness in this judgement. In fact, the ease with which Erdoğan could instruct Turkish judges to carry out his announced countermoves proves this clearly.

Erdoğan must have been very grateful for the opportunity to demonstrate his ability to hold the upper hand over decisions made about political opponents just four months before coming local elections. He delegitimised the ECHR by calling it a "supporter of terror" and accelerated the final conviction of Demirtaş, who journalist Jasper Mortimer has described as being 'the most charismatic politician in the country, earning the epithet "the Kurdish Obama"'.⁴ So, towards which terrorists exactly does the ECHR direct its love?

³ ECHR Judgment Selahattin Demirtas v. Turkey (no. 2); November 20, 2018.

⁴ Mortimer, Jasper: Turkish appeals court upholds conviction of top Kurdish politician; Al-Monitor, December 4, 2018

Erdoğan also said that “The decision does not bind us. We will counter it and finish what we’re doing.”⁵ This statement references the decision of the Istanbul Regional Court of Justice on 4 December, which changed Demirtaş’s status from that of an arrested defendant to that of a convict. This rendered the ECHR ruling obsolete, as it had referred to his pretrial detention only.

Erdoğan’s reaction demonstrates not only how easily he can sidestep ECHR rulings but also tells us a lot about his understanding of an independent judiciary. As *Cumhuriyet* newspaper reported, Erdoğan called Ankara’s chief prosecutor Yüksel Kocaman to the presidential palace right after the ECHR demanded Demirtaş’s release.⁶ Kocaman then shared a picture of himself with the President on his Facebook account that same night.

Demirtaş responded humorously on Twitter by saying: ‘I don’t say “don’t do it”, but don’t do it in such an obvious, amateurish and ignominious way. I don’t accept the punishment and threats given by the judge who is subordinated to the government.’⁷ However, Demirtaş’s response to Erdoğan’s immediate rejection of the ECHR’s decision and to Erdoğan’s invitation of Kocaman to the presidential palace raises an important question: Just what is it that gives Erdoğan the confidence to ignore the ECHR?

Turkey is one of the founding members of the Council of Europe, whose best-known body is the ECHR. In 2017, the five major donors to the Council – Germany, France, Italy, Britain and Russia – were joined by Turkey, which contributed 33.8 million euros to the Council’s 455 million euro budget for that year. But in November 2017, Turkish Foreign Minister Mevlüt Cavuşoğlu sent a letter to the Council of Europe’s General Secretary Thorbjörn Jagland informing him that Turkey would step back from its position as a major donor due to the decision by the Council of Europe Parliamentary Assembly (PACE) to honour former judge Murat Arslan with the Vaclav Havel Human Rights Award. Arslan was previously head of the Judges and Prosecutors’ Union (YARSAV) until he was accused of having links with the Gülenist movement in 2016.

As legal scholar Ümit Kardaş concludes, Turkey has thus ‘removed a source of income from the council at a time when it is already experiencing serious financial difficulties. This has raised fears,

⁵ *Erdoğan, who says ECHR decision on Demirtaş not binding, applied to the court three times – Euronews*; Ahval, November 21, 2018.

⁶ *Demirtaş kararı gününde Saray’da başsavcı ile görüşme*; Cumhuriyet, November 22, 2018.

⁷ Twitter @hdpdemirtas, December 4, 2018.

particularly that operations of the European Court of Human Rights, a body of the 47-member Council of Europe, would be adversely affected as a result.⁸ Turkey's withdrawal of funding was clearly intended to put pressure on these institutions. Thanks to the honesty of the Council, which admits to having financial difficulties, the Turkish government now knows that it is currently confronting a paper tiger. It is difficult to determine how independent a judicial institution can be when it is so visibly dependent on the financial support of one of the parties that it is expected to judge.

But why should Turkey even bother itself with an institution that takes a lot of money from it and gives back little more than pious sermons about human rights, when Erdoğan is not even quite sure if terrorists deserve even that much consideration?

If a mother doesn't allow her child to eat chocolate, the child will try to get permission from its father instead. If one parent turns out to be less strict than the other, the child quickly learns which one it has to address to get what it wants. This actually tells us more about the relationship between the parents than it does about the child's deceit.

A similar behaviour can be seen with Turkey's current approach towards Germany. Since the failed coup attempt against Erdoğan in July 2016, Turkey's ties with European countries and institutions have deteriorated. This has resulted in the reopening of the monitoring procedure for Turkey by the parliamentary body of the Council of Europe.⁹ But following Turkey's financial and economical crises in 2018, Erdoğan now knows that Turkey will be even more dependent on European investment. He avoided asking the International Monetary Fund (IMF) for credit, because this would allow external actors to intervene into Turkish politics, primarily by forcing the government to implement austerity programmes.

The AKP would not be completely opposed to austerity in principle but to do this just before elections is hardly ideal, especially if it involves an external blow to Erdoğan's authority. From Erdoğan's standpoint it is far better to recover bilateral relations with some European countries separately than to deal with an entire bloc of Western countries through institutions that make

⁸ *Tension rises between Turkey and ECHR*; Ahval, November 10, 2017.

⁹ *Turkey aims to exit from CoE monitoring process ASAP*; Hurriyet Daily News, November 5, 2018.

embarrassing demands around human rights. Sometimes the oldest friend is the best, or as Fehim Tastekin put it, ‘when Turkey catches cold, Germany sneezes’.¹⁰

During Erdoğan’s visit to Germany in September 2018, German Chancellor Angela Merkel made clear that she prefers to focus on Germany’s common strategic interest with Turkey in preserving Turkish economic stability. A quick look at the economic relations between these two countries makes clear what is at stake. More than 7,000 German companies operate in Turkey with around 120,000 employees. Germany used to be one of Turkey’s biggest export markets and is still one of Turkey’s largest sources of imports. Kenan Mortan, a senior Turkish economist and visiting scholar at EISTI-Paris, told *Al-Monitor* that “Siemens, which has assumed all of Turkey’s [railroad] signalization projects, has recently taken a strong interest in nuclear energy and railroad projects. Having missed the second nuclear power plant project, Siemens could be invited to the third one. Bosch, meanwhile, is running all of its Middle East operations from Turkey. They have expanded incredibly in the home appliances sector [from their plant] in Cerkezkoy [in Turkey’s northwest].”¹¹

While Turkey is judged by the ECHR for its violations of human rights, one of the most influential countries in Europe is rewarding the Turkish government with new investments. These contradictory signals from Europe provide Erdoğan with the ability to manoeuvre between different institutions according to his needs. Bilateral economic deals between Germany and Turkey thus undermine the authority of the ECHR.

And Turkey plays an even bigger role for Germany. There are more than three million refugees in Turkey, many of whom had originally planned to go to Europe. But Angela Merkel’s decision in 2015 to open Germany’s borders to refugees has brought about Merkel’s political decline, prompting her to want to revive Erdoğan’s role as the EU’s outside doorman.

Dimitris Christopoulos, Associate Professor of State and Legal Theory at the Department of Political Science and History of the Panteion University of Athens, says that “Turkey buys the EU’s silence over its authoritarian shift. So, if I would have to blame someone, I would not blame Turkey first I would blame EU who cynically enough accepts this bazaar with Turkey on human lives.” Asked why the ECHR still considers Turkey’s State of Emergency Commission as being an effective domestic

¹⁰ Taştekin, Fehim: *Is the Turkish-German spring illusive?*; *Al-Monitor*, November 1, 2018.

¹¹ *ibid.*

avenue that must be pursued before the ECHR can hear any appeals, Christopoulos answered that the ECHR “until today has been not proved to be as efficient as it should have been”. He added that “there is a general fear that [...] some complaints are [...] considered admissible by a Court” and that as a result the ECHR “will sink from the volume of complaints that will come from Turkey [...]. That is why I think the Court [does] not put the necessary pressure [...] before the Turkish authorities.”¹²

The practical inability of the ECHR to implement its decisions might lead to disappointment and a loss of trust in European institutions amongst the Kurdish opposition in Turkey. Four months before the next local elections, every weakening of the HDP benefits the AKP, because the two parties are each other’s main rivals in the Kurdish-dominated provinces. But elections to the European Parliament are also due in May 2019. Erdoğan has therefore already threatened to flood Europe with millions of refugees if Europe decides anything against his will.

In her 2013 article ‘To Europe and Back: The Law and Politics of Turkey’s Kurdish Question’¹³, Dilek Kurban describes the different phases of relations between Turkey and various European institutions. During its first few years of government, the AKP managed to maintain its image of having a pro-EU agenda. However, in reality, Turkey hoped for a reduction in accusations of human rights violations at the ECHR in order to strengthen and legitimise the AKP government with regard to its – at that time antagonistic – relations with the military. In return for this, some concessions towards Kurdish political demands were a tolerable price to pay.

For as long as European institutions allowed the AKP to strengthen its position at home, it was no problem for Erdoğan to maintain an image of playing by the rules. But now that Erdoğan has achieved his goal of disempowering the old Kemalist elites and the military, European institutions have become more of an obstacle.

In 2013, during the then ongoing peace process, Kurban concluded that “Europe [...] has lost its pivotal role in Turkey’s democratization process and the solution of the Kurdish question. Having lost its soft power over the Turkish government and legitimacy in the eyes of the Kurds, the

¹² Vairami, Polyxeni: *ECHR Do Not Put the Necessary Pressure Before the Turkish Authorities*; Platform for Peace & Justice, December 12, 2018.

¹³ Kurban, Dilek: *To Europe and Back: The Three Decades of Kurdish Struggle in Turkey*; Global Turkey in Europe, Policy Brief 07, March 2013.



European political and legal institutions are virtually sidelined from the process where the parties are searching for a ‘home-grown’ peaceful settlement.”

Now, five years and several elections later, there is a return to civil war-like conditions. The Turkish President officially declared the end of any peaceful solution on 17 December, saying “Don’t expect a new peace process, that business is over.”¹⁴

One can of course debate whether or not European institutions should have acted more assertively towards the Turkish government earlier on. However, today, they appear to be quite impotent with regard to any relief for the opposition in Turkey and have even become part of the problem, as the refugee deal demonstrates.

¹⁴ *Cumhurbaşkanı kapıyı kapattı: Bir daha çözüm süreci falan beklemeyin, geçti o iş*; Dik-en, December 17, 2018. <http://www.diken.com.tr/cumhurbaskani-kapiyi-kapatti-bir-daha-cozum-sureci-falan-beklemeyin-gecti-o-is/>