

“Fundamentally a Political, Not a Legal, Case”

A Conversation with Meral Daniş Beştaş on Turkey’s Move to Close the HDP

September 2021

On June 21, Turkey’s Constitutional Court agreed to review a case brought by a top prosecutor in Ankara to close down the Peoples’ Democratic Party (HDP). The move launched a highly controversial and consequential judicial process. The HDP is Turkey’s second-largest opposition party and its largest predominantly Kurdish party. With a uniquely progressive platform that promotes social diversity and pluralism, the HDP is the parliament’s most vocal advocate for the rights of Kurds and all marginalized communities, including the country’s ethnic, religious, and sexual minorities.

If the Court rules for the HDP’s closure, the move would disenfranchise millions of voters—and call into question the integrity of Turkey’s upcoming presidential and parliamentary elections, scheduled for 2023. In the worst case, the party closure could trigger social unrest and violence.

Since the HDP became the first predominantly Kurdish party to enter the Turkish parliament in 2015, it has been the target of constant attacks and pressure from the government and its allies. President Recep Tayyip Erdoğan, the ruling Justice and Development Party (AKP), and the AKP’s junior ally, the ultranationalist Nationalist Movement Party (MHP), all seek to delegitimize the HDP by constantly equating it with the outlawed Kurdistan Workers’ Party (PKK), a designated terrorist group. Nearly all 56 HDP lawmakers are facing criminal investigations for alleged links to terrorism and for spreading propaganda on behalf of a terror organization, accusations that are based on an overly broad definition of terrorism and propaganda. Thousands of party members, including the former co-chairs and several elected mayors, have been detained on terrorism charges. HDP lawmakers, including prominent human rights defender Ömer Faruk Gergerlioğlu, have been removed from parliament on flimsy pretexts.

*The closure case is the culmination of this six-year campaign against the HDP. The whopping 843-page indictment **charges** the HDP with colluding with the PKK and with attempting to “destroy the unity of the state” and seeks to ban 451 party members from politics. The Constitutional Court could rule against the government; in a surprise decision in July, it ordered the **release** of HDP MP Gergerlioğlu, saying that his rights had been violated. (Parliament **restored** his MP status on July 16.) At the same time,*

this court has a history of shutting down political parties and could well rule against the HDP. The Turkish judiciary is under heavy political pressure, and the closure case materialized only after persistent calls this spring from MHP leader Devlet Bahçeli for such a prosecution. The court will certainly be paying attention to the opinion of Erdoğan and his MHP allies before it makes a decision.

To better understand the closure case, its motives, and the potential consequences of banning the party, POMED's Merve Tahiroğlu spoke with the HDP's Meral Daniş Beştaş, an MP representing Siirt and chair of the HDP parliamentary group. This interview has been translated from Turkish and edited for clarity; it is also available in [Turkish](#) and [Kurdish](#).

POMED: Why is the government trying to shut down the HDP?

Meral Daniş Beştaş: I want to start with a reminder that the AKP itself has survived two unsuccessful closure attempts (in 2002 and 2008). It has therefore suffered from the incurable wounds that party closures have inflicted on Turkey. The AKP used precisely this experience to push for constitutional amendments, approved in a September 2010 referendum, to make it harder for the courts to ban political parties. In fact, the AKP relied on this particular issue to garner broader public sympathy for its whole package of constitutional amendments.

The process to close the HDP actually began back in June 2015 (after the HDP's strong electoral showing caused the AKP to lose its longstanding parliamentary majority). Erdoğan's bad policies, his government's interventions against people's way of life, his response to the 2013 Gezi protests, his party's corruption scandals, and his entirely insincere approach to the Kurdish problem all led to that rebuke in the June 7, 2015 general election.¹ The results showed that people do not want the AKP to rule the country on its own—and that they consider the HDP an important political actor.

Ever since, the AKP has been responding to its defeat with revanchist policies. One tactic has been gross human rights violations. Curfews in the Kurdish provinces, the **burning** of people in the basements of the Kurdish-majority town of Cizre, the torture inflicted by security forces on people's dead bodies, the death threats put on the walls of people's homes—all of these actions were part of the ruling party's destructive response to the HDP's rise. They tried to destroy our party from within. The replacement of our mayors with trustees after the 2016 coup attempt and the **arrests** of our mayors and lawmakers are examples of this approach.

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But despite these repressive policies, the AKP continued to lose at the ballot box. It saw this over and again in the general elections of June 24, 2018 (when it suffered a 7-percent drop in

1. Ed. note: In the June 7, 2015 general election, the AKP lost its parliamentary majority for the first time since coming to power in 2002, and the HDP won 13 percent of the votes, becoming the first Kurdish-led party in history to enter parliament by crossing the 10 percent electoral threshold.

its vote share and lost its parliamentary majority), and in the municipal elections of March 31, 2019 (when it lost key cities, including Ankara and Istanbul, to opposition parties).

Today, the AKP is facing a total failure of all its policies, not least its economic policies. As it sees that it cannot win through the ballot box, it strives to stay in power through extrajudicial means. For its own survival, the ruling party has to silence the people and to inflict oppression. And as the AKP sees the HDP as a massive and undefeatable force, it has decided to go after us. It is using the judiciary as a tool to destroy the HDP.

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What would be the implications if the Constitutional Court rules in favor of the HDP's closure?

The forced shutdown of a political party undoubtedly will damage Turkish democracy. Such a practice is without question putschist. And as precedents show, the damage caused by party closures is not really possible to repair. The short-, medium-, and long-term consequences of an HDP shutdown are all the same: a totally dark future. The HDP's possible shutdown does not only concern our voters. We are talking about something that has an impact on

the entire country. A closure would affect those who support all political parties, and even those who are apolitical. The closure of a party through an indictment that defies the law will amount to an official declaration that there is no justice in the country.

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We make this point all the time, so it has lost some of its value, but if there is no justice in a country, then there is no country. The more a state strays from its constitution, the more it loses its legality; it becomes an illegal state. If there is no trust in the judiciary, there can be no trust in the economy. This means that as people are forced to face more

oppression, they also will be forced to face more hunger and poverty. Human rights will be suspended altogether. We will see chaos that is even greater than the chaos of today. If the HDP is closed, the economy will not be any better; there won't be democracy! On the contrary, if the HDP is closed, the oppressive policies will expand to all factions of society. The youth, the elderly, women, children, the disabled, minorities, and even those who think they represent the majority...everyone except the Palace and its close allies will be hurt.

What is the timeline for this case, and what process will the Constitutional Court follow?

The HDP received the indictment on July 9. Normally, the indicted party has one month to submit its defense, but it can demand extra time depending on the scope of the indictment. The court gave us 60 days and scheduled our defense for September 7. On August 11 we asked for an extension, and the court gave us an extra 30 days.

Once we submit our defense, the prosecutor will be called to make the state's argument before the court, and we will offer our defense. Then the court rapporteur will submit its notes, and the court will make its final judgment. If the court rules that the HDP is acting as a “center of anti-constitutional actions,” as the indictment alleges, it can decide either to shut us down or

to ban financial support from the state to the party. These decisions require a two-thirds majority vote, meaning 10 of the Constitutional Court's 15 members.

The timing depends on the court's agenda and on how long we take to submit our defense. While there are party-closure cases that have been waiting for two years, there are other such cases that have been resolved within four months. So the legal process could take years, or just a few months. The crucial point is that we cannot foresee how the process will go because this is fundamentally a political, not a legal, case.

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Do you think the Constitutional Court is likely to rule in favor of HDP's closure?

This is a very important question. While the Court has made quite just and democratic decisions in the past, the public also knows that it can sometimes issue rulings that are contradictory and unjust. Here, if the court makes a just ruling, it will not shut down the party. This is definitely possible. This is an institution that can make just and legal decisions—as we have seen with the recent case of (Ömer Faruk) Gergerlioglu.

It is crucial to keep in mind, however, that the Constitutional Court has a history of banning political parties. Over the last 60 years, it has shut down 25 political parties—and this number does not even include the party closures that occurred under military regimes. Six parties were shut down under the 1961 Constitution, and 19 under the 1982 Constitution. With the exception of the Welfare Party, all these parties were closed down for “threatening the country's territorial integrity.”²

“THE CONSTITUTIONAL COURT HAS A HISTORY OF BANNING POLITICAL PARTIES.”

Significantly, the European Court of Human Rights (ECtHR) found the Turkish court's reasoning in each of these closure cases to be unjust. This shows that the Constitutional Court has always made rulings that are wrong, ideological, and against universal legal norms. Indeed, all of Turkey's legal texts—the Constitution, the penal code, the criminal code,

terrorism laws, electoral laws, etc.—unfortunately have measures that restrict democracy and even make democratic politics impossible.

It is also obvious that the Constitutional Court is under immense threat and pressure from the government. Our case aside, there are demands for the Constitutional Court itself to be shut down. But the last word I will say on this is that should the Court stray from justice and decide to shut down the HDP, it should just go ahead and dissolve itself.

What role can Europe play throughout this process?

First we must look at what the European Convention on Human Rights (ECHR) and the ECtHR, which implements the ECHR, have to say about party closures. The ECHR's Article 11

2. Ed. note: The Welfare Party (Refah Partisi) was the AKP's predecessor and was closed in 1998 for “threatening secularism.” The last party closure in Turkey was in 2009, when the court banned the Kurdish Democratic Society Party (Demokratik Toplum Partisi) for “threatening Turkey's territorial integrity.”

protects freedom of association, and Article 10 protects freedom of expression. The closure of a party amounts to limiting these freedoms, and the only legal pretext for doing so is if such action is required to protect democratic society. Even more important, the ECtHR has stated that political parties are an essential form of association for a democracy to function properly, and thus that solid reasoning is especially required in party closure cases—more so even than in NGO closure cases. The ECtHR has a history of judgments against party closures, and its most important decisions involve Turkey.³

Meanwhile, the Venice Commission (or the "European Commission for Democracy through Law"), the Council of Europe's main advisory body on constitutional matters, has also warned against the criminalization of political parties without solid cause. The Commission has emphasized the need to protect a lawful democratic party's right to express ideas about amending a country's constitution. For political parties to seek change or even to question a state's fundamental organization is an essential element of democracy.⁴

In short, the ECtHR is an institution that has determined that Turkey's party closures violate the ECHR. Taking this reality into account, Europe must defend its own political principles. That said, Turkey is a member of the Council of Europe and a candidate to join the European Union (EU). For this reason, decisions made by the ECtHR are binding for Turkey. And for a country that seeks to join the EU, following that body's jurisprudence concerning party closures is a must.

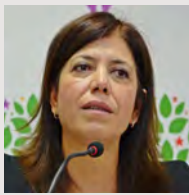
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What role can the United States play?

Upon taking office, President Joseph Biden declared to the international community that his administration would follow a foreign policy that prioritizes human rights and democracy. It is clear that this closure case violates those very values. It is the international community's expectation that the United States will defend its own principles and make clear its human rights policies.

3. These are: the January 30, 1998 case of the United Communist Party/Turkey (Birleşik Komünist Partisi/Türkiye); the May 25, 1998 case of the Socialist Party/Turkey (Sosyalist Parti/Türkiye); the December 8, 1999 case of the Freedom and Democracy Party/Turkey (ÖZDEP/Türkiye); the April 9, 2002 case of Yazar/Türkiye; and the February 13, 2003 case of Welfare Party/Turkey (Refah/Türkiye).

4. Ed. note: This is a reference to the prosecutor's charge in the indictment that the HDP poses a threat to Turkey's territorial integrity by allegedly supporting Kurdish secession from Turkey. The HDP does not advocate for Kurdish separatism; however, it strongly supports decentralization and more regional autonomy in Turkey.



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