

Maintaining Turkey's democracy

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Democracy is not a suicide pact. No nation is required to be too weak to defend its own democratic dispensation. Accordingly, the Republic of Turkey should not be faulted for its pending initiative through chief prosecutor Abdurrahman Yalcinkaya to ban the Democratic Society Party, or DTP, before the Constitutional Court featuring all the trappings of due process. According to Yalcinkaya, the DTP is a virtual appendage of the Maoist terrorist organization Kurdistan Workers' Party, or PKK, which has been responsible for the deaths of a grim 15,000 Turkish civilians and security force members. Most of the PKK's civilian victims are other Kurds who repudiate their assassinations. The DTP openly endorses the PKK's secessionist aims and violent methods.

Banning political parties that aim to sabotage the constitutional order is not anti-democratic. Democracies ranging from Germany to Israel have proscribed parties for celebrating racism or violence. As the U.S. Supreme Court explained in *West Virginia State Board of Education v. Barnette* (1943), the whole purpose of a Constitution is to place certain fundamental values beyond the reach of popularity contests.

But Turkey should not hamstring itself with a Hobson's choice between banning the DTP and doing nothing. Even if legitimate in a democracy, banning a political party jars with the idea of democratic representation, i.e., voters should decide which candidate or party best represents their political interests. Turkey's Constitutional Court displayed statesmanlike creativity in recently refusing to ban the ruling Justice and Development Party, or AKP, but instead imposed a stiff financial penalty for its flirtation with contra-constitutional principles. That precedent suggests that Turkey's parliament should likewise widen the range of legal options for challenging the DTP, informed by the U.S. example, in seeking to cripple or defeat terrorism.

American laws and terrorism propaganda

What seems generally to be known about the DTP's collaboration with the PKK is as follows: DTP members visit PKK camps and pose for pictures. Some have family members serving under arms as members of the terrorist organization. They appear on PKK TV – ROJ TV – in support of the PKK's secessionist and assassination agenda. They routinely praise convicted and imprisoned PKK leader Abdullah Ocalan and plead for his release.

This type of synchronized behavior raises the question of whether the DTP is either using or is complicit in money laundering funds generated by the PKK from its trafficking in drugs and humans and extortion from Kurdish businesses. Routinely characterized as discharging a “duty to their constituents,” DTP officials visit and salute families of PKK terrorists killed in action against Turkish security forces in Turkey or northern Iraq. They

offer the families monetary assistance indistinguishable from donations made to families of Hamas suicide bombers by U.S.-based charities. The latter, however, have been closed and their assets seized by the United States under provisions of the Patriot Act.

The U.S. anti-terrorism laws would authorize the criminal prosecution of DTP members for training in PKK camps or appearing on PKK TV to boost its aims or philosophy all funded by tainted PKK funds. The U.S. punishes the provision of “material support or resources” to designated terrorist organizations. Training in a terrorist camp has been held to constitute material support by offering one's own self to a terrorist organization. Similarly, the DTP's provision of its own personnel to appear on the PKK TV would be punished under U.S. laws as material support for the PKK's propaganda arm.

The U.S. also prohibits money laundering. The crime is generally characterized by the conversion of the proceeds of criminal activity into money or property that carries the appearance of legality by concealing the true nature and origins of the money. If the DTP's receipt of money from the PKK derived from drug trafficking or human smuggling either for its own use or to purchase property for the PKK could be established, it would be criminally punished as money laundering under U.S. laws.

Lessons for Turkish Parliament

The United States empowers the president to freeze the assets or to prohibit the provision of goods or services to persons suspected of complicity in terrorist activities without the necessity of an arduous or lead-footed criminal prosecution. The U.S. Department of Justice may initiate civil actions against non-governmental organizations that have allegedly assisted terrorist organizations and to freeze their assets unilaterally at the outset of the litigation. Turkey's parliament should similarly consider legislation that would authorize the chief prosecutor to freeze the assets of the DTP for assisting both philosophically and materially the PKK's terrorist objectives. U.S. laws further authorize the president to issue executive orders that instantly immobilize an individual's or organization's assets and prohibit any third party from providing goods or services of any type to that person or organization. The executive orders are justified whenever the president suspects that the targets may commit a crime that might undermine a national security interest of the United States.

Turkey's Parliament might similarly endow the prime minister or president with summary authority to impose a financial “death penalty” on the DTP or other persons or entities suspected of harboring an inclination to undertake or promote violence dangerous to the national security, for example, the DTP's glorifying the terrorism of convicted terrorist Abdullah Öcalan.

Finally, U.S. laws authorize victims of terrorism to sue the perpetrators for three times the amount of damages suffered. Turkey's Parliament should consider enacting a comparable law that would enable the victims of the PKK's terrorism to sue the DTP for treble damages based on their own statements that "the PKK is the backyard of the DTP." In the eyes of the law, the two would be joint tortfeasors, or wrongdoers, liable for injuries caused by one another. In sum, Turkey should learn from the United States example. Turkey's Parliament should devise nimble legal strategies to prevent political parties like the DTP from derailing the constitutional order by acting as apologists or otherwise promoting undeniably terrorist organizations. Banning the DTP or like-minded parties should not be the sole option.

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