

“I’m a Turk, Upright and Hard-working”: A Tale of the High Judiciary in Turkey

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Observers of Turkish politics who have focused on its staunch military to make sense of the troubled democracy in the country have little noticed the critical role played by the high judiciary in sustaining the regime. This article discusses the role of the judiciary in blocking a political opening and in curtailing political rights and liberties.

School children in Turkey have been making a “gift” of their budding little selves to what seems to be a menacingly demanding “being” every school day in the morning, before classes, since 1933. This act of devotion from children comes in a pledge that is compulsory in all primary schools, state-funded or private. Only the non-nationals are exempted from swearing it. Penned originally by a Minister of Education of Ataturk, the founder of modern Turkey, the pledge would come in 1972 to include a direct address to Ataturk himself, whose name literally reads “the father of Turks”. This pledge extended by children within the cult of an ever-present and all-knowing father, all too familiar to those who have visited Turkey, articulates: “I’m a Turk, upright and hard-working. My principle is to protect my younger, respect my older, and love my homeland and nation more than myself. My goal is to rise and go forward. O Great Ataturk! I swear pledge to marching ceaselessly on the road you paved, and towards the target you laid out. May my being be a gift to the Turkish being. Lucky to be a Turk!” (The last sentence, which is a motto introduced by Ataturk, more literally translates: “how happy he is who says he is a Turk.”) If the language of the pledge sounds in English broken and bizarre, it feels no less unreal in the original Turkish.

The injustice of painting the mountains of the Kurdish-populated South-eastern Turkey in huge letters of the motto “Lucky to be a Turk,” a long enduring practice of the military, was once pointed out by Abdullah Gul, a remark later used against him in an abortive coup in April 2007, when Gul was nominated (and subsequently elected) president. The thwarted coup would effectively mean the beginning of the end for the official ideology that emerged in 1930s, Kemalism, named after Kemal Ataturk. Yet, full political normalization that would free the country of the anachronisms of the 1930s is likely to take time. Not surprisingly, last month, the State Council, the highest administrative court seated in Ankara, summarily dismissed a long overdue application by Kurds that challenged the compulsory student pledge on grounds of human rights violation.

Observers of Turkish politics who have focused on its staunch military to make sense of the troubled democracy in the country have little noticed the critical role played by the high judiciary in sustaining the regime. A set of high courts have long held sway over political parties (notably by dissolving many of them), acts of parliament, government decisions, and the practice of human rights. There has always been a divide between the so-called “chair” judges of ordinary courts and those in the high judiciary. The high court judges have mostly been unwavering Kemalists through the unique role of the president, as

opposed to the government, in enacting appointments to these positions, in conjunction with a co-optative system among high courts in suggesting nominations for the posts. From early 1990s this divide grew further, as Kemalists became more and more alarmed by the growing defiance of the Kemalist heritage in politics by both pious Muslims and Kurds. The increasing partisanship on the part of the high judiciary emboldened the like-minded judges and prosecutors functioning at ordinary courts and inhibited the rest.

The key part played by the judiciary in the brutal oppression of Kurds is testified in many cases decided by the European Court of Human Rights (ECHR) against Turkey. In the most vicious phase of this conflict in 1990s, the judiciary covered up, or otherwise ignored, wilful destruction of villages and extrajudicial killings of innocent civilians by security forces. The judiciary has been equally indifferent to the grievances of the Alevi minority, a heterogeneous Muslim sect that forms 10 to 20 percent of the population. Just as Kurdish children are compelled to chant the compulsory school pledge every morning, Alevi children are forced to attend religious classes in schools that virtually ignore Alevism. The demand for these children to be able to opt out of religious classes has been consistently rejected by the judiciary over the years, culminating in a decision of the ECHR in 2007, which finds Turkey in blatant disregard of both the freedom of religion and the right to education. The forced religious teaching may sound out of place, given that Kemalism is known for its avowed secularism. The practice is ostensibly linked to a securitizing approach to religion which seeks to control the social space occupied by religion through state indoctrination, with a view to preventing, as it was put by Turkey before the ECHR, "abuses" of religion in the hands of private believers. Accordingly, Alevism is repressed, as is the devout mainstream Islam (typified in the much discussed judicial ban on the wearing of Islamic headscarf at universities), with the aim of creating a state religion that is in keeping with the Kemalist social engineering.

The judiciary has recently been brought to the focus in the international public opinion for its stringent application of a norm in the penal code that punishes "denigrating Turkishness". (The term "Turkishness," which refers in the local political culture to an objectified Turkish identity, an ethnic stock, including Turkic peoples outside Turkey, was replaced in 2008 by the phrase "Turkish nation".) The norm has been used in a number of high profile cases, including one against Noam Chomsky in 2006, with the overall effect of intimidating and harassing intellectuals in the country. One of the most highlighted is the case of the Turkish Armenian journalist Hrant Dink for a statement in 2004. Dink had put it in his newspaper column that the Armenian politics of identity had long

been tainted by an unhealthy obsession over Turks and that they had to get rid of this bad, "poisonous" blood. An expert report requested by the court did not interpret the remarks by Dink as an insult to Turkishness. Yet the judgement went ahead heedless, finding Dink guilty. This ruling would be subsequently upheld by the Court of Cassation, the supreme court of civil and criminal appeals, leading to yet another assessment of Turkey by the ECHR in 2010. The Strasbourg court concludes in its decision that Turkey has been in violation of not only the freedom of speech, but also the right to life, as Dink was murdered in 2007 in the midst of a nationalist campaign of hate following the case against him.

A similar case against the Nobel laureate Orhan Pamuk is in process since 2005, when Pamuk stated in an interview in a Swiss journal: "Thirty thousand Kurds have been killed here, and a million Armenians. And almost nobody dares to mention that. So I do." A criminal complaint was immediately lodged with an Istanbul court against Pamuk for denigrating Turkishness. Initially, the local court did not find the complainants, well-known figures in nationalist circles, inflicted with a legally discernible damage by Pamuk's statement, hence not qualified to be litigants. Yet this dismissal was swiftly overruled by the Court of Cassation. Eventually prosecuted, Pamuk was found guilty as charged in last March. The complainants in the case have been awarded 6 thousand Turkish liras each (about \$4,000) in damages purportedly caused by Pamuk's statement. The case is presently back with the supreme court awaiting a review on Pamuk's appeal. Assuming that the case will be a precedent for thousands (even millions) of other possible litigants against Pamuk, each demanding from him the amount ordered by the court in this case, the entire thing may turn into a nightmare for the novelist, although the new claims should normally be dismissed because of the lapse of time that legally absolves the defendant. This said, those familiar with the Turkish high judiciary in a number of recent political cases will know that the outcome is rather unpredictable.

A constitutional amendment in 2002 made Turkey's international agreements on democracy and human rights part and parcel of its domestic law, on a par with the constitution. Yet this development, hailed by human rights activists as a breakthrough, seems to have produced little effect in practice in constraining the judiciary. The latest measures introduced in 2010 and early 2011, the first through a major amendment in the constitution in a heated referendum, seek to break the closed system of the high judiciary and open it to the mainstream as reflected in democratic politics. The changes have been welcomed in the regular report of the European Commission on Turkey. The decision by the Council of State, the supreme administrative court, on the compulsory student pledge,

noted above, which finds nothing wrong with the practice, is yet another indication that the high judiciary, a crucial bastion of the old guard, will not take the defeat lying down.

In its decision, adopted through a unanimous vote, the high court refers to a provision in the Turkish Constitution that states: "All who are affiliated with the Turkish state through nationality are Turks." This definition, the court argues, should be read into the references to the Turkish identity in the student pledge. In other words, the "Turk" and "Turkish" in the pledge refer to a civic form of identity, rather than an ethnic stock; hence, no racism, no discrimination, can be claimed to be at work. According to the court, the pledge is designed to inculcate in the new generations the "pride" and "joy" of being part of the Turkish state and society. It is highly dubious that this tired mantra of Kemalist nationalism, used when challenged by the discourse of human rights, will convince the ECHR, where the case is likely to end up, especially when combined with the textbooks and teaching on the Turkish identity thrust into the very same school children. A comparison between this decision by a Turkish high court and the celebrated ruling of the United States (US) Supreme Court in 1943 (*West Virginia State Board of Education v. Barnette*), in which the court finds unacceptable the relatively more innocuous US pledge of allegiance for denoting "compulsory unification of opinion," should reveal how far removed the high judiciary in Turkey is from its self-declared commitment to "the most advanced levels of civilization," which is another Kemalist motto.