

# **Turkey's dark side**

## **Party closures, conspiracies and the future of democracy**

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## The battle for Turkey's soul

2007 was a dramatic year for Turkish politics and society, even by the standards of a country used to political drama. However, few people would have expected 2008 to be even more volatile, and potentially catastrophic, for Turkish democracy.

The fact that the Turkish Constitutional Court agreed unanimously on 31 March this year to hear an appeal by the Chief Prosecutor to close down the governing Justice and Development Party (AKP) and to ban 70 of its members from political life is a serious blow to the credibility of Turkish democracy.<sup>1</sup>

The Chief Prosecutor accused the AKP of being “the focal point of anti-secular activities.” The triggering event was the government’s rather cautious moves to end the headscarf ban in Turkey’s universities. The charges are, however, incoherent and obviously political. Opinion polls reveal overwhelming public support for allowing women with headscarves to attend university in Turkey. There is no other country in Europe where this is a problem at the level of higher education.<sup>2</sup>

In fact, the headscarf ban in Turkey has no clear legal basis. The constitutional amendments adopted by Parliament in January this year merely reaffirm the principle of non-discrimination and equality before the law, that are in the current constitution, without any specific reference to either religion or the headscarf. They were passed with the support of the opposition Nationalist Action Party (MHP), which, unlike the AKP, has not been targeted by the judiciary. Moreover, another centre-right party, ANAP, which had a parliamentary majority in the late 1980s, had then tried to pass legislation to affirm the right of religious women to wear headscarves in university. In fact, from 1989 until 1997 Turkish women were largely able to attend universities with headscarves as a result.

Yet today the headscarf has again become a potent symbol of the struggle between the conservative AKP government, re-elected in July 2007 with overwhelming public support, and its Kemalist opponents. The question is now whether the Constitutional Court, traditionally a bastion of the Kemalist establishment, is prepared to attempt a judicial coup, plunging Turkey into a deep constitutional crisis.

The prospect of a judicial coup seems extraordinary for a country that is a member of NATO and the Council of Europe and is negotiating for EU membership. But sadly, derailing Turkey’s move towards Europe may be the very goal of this political manoeuvre, by those who prefer international isolation to giving up their traditional power and privileges.

This legal action turns out to be the culmination of a number of attempts over the past four years to destabilise a popular Government. There are strong indications that coup preparations by high-level military officials were taking place throughout 2004. This was followed by a series of political assassinations and mysterious murders which recent investigations have linked to a shadowy ultra-nationalist organisation with close links to the security establishment. A year ago, the military issued a dire warning to the Government over the election of a President whose wife wears the headscarf – only to back down when the government demonstrated the strength of its popular support through a snap election.

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<sup>1</sup> The prosecutor had proposed to ban 71 politicians from political life for 5 years. All indictments except the one targeting President Gul were *unanimously* accepted by the judges of the constitutional court.

<sup>2</sup> The restrictions on the headscarf in France only apply in schools, not in universities.

So what could the Turkish government do? What should the EU do in response? To help policy makers answer this question, ESI has put together this background briefing.

We believe that Turkey's friends and allies should urge the Government to go on the offensive. The AKP should use its popular mandate to push ahead with plans for an overhaul of the current constitution, not waiting for the judgement of the Court. The present constitution, dating from 1982, is still all too obviously the product of the military coup that took place in 1980. As the chair of the working group which produced a draft for a new constitution, Ergun Ozbudun, wrote in 2005:

“A constitution, which should be an ideologically neutral instrument as far as possible, should not impose the same social and economic choices on all contesting parties. If it does, the essential meaning of multi-party politics and inter-party competition will be lost.”

A referendum on a new, more liberal constitution would under current conditions become a referendum on the very essence of Turkish democracy. In this way, in one of the many ironies that characterise political life in Turkey, it may very well be that the headscarf, the symbol most feared by Turkey's secularists, could become the trigger finally pushing Turkey to adopt a modern European constitution.

### **Murder in Istanbul (January 2007)**

On 19 January 2007, Hrant Dink, founder and editor-in-chief of the weekly *Agos*, was assassinated as he returned to the offices of his newspaper at 3pm in the Sisli district of Istanbul. Dink was an ethnic Armenian. He had founded *Agos*, a newspaper in Turkish and Armenian, in 1996. It had become one of the voices calling for change in Turkey, not just for Armenians, but also for liberal Turks and other minorities. It had also called for improvements in relations between Turkey and Armenia.

Dink had been a target of nationalist circles for many years. He was repeatedly prosecuted under article 301 of the Penal Code, acquitted the first time in February 2006.<sup>3</sup> He was convicted in October 2005 for denigrating Turkishness and received a 6-month suspended jail sentence. Nationalist lawyer Kemal Kerincsiz, who heads the Great Union of Lawyers, appealed, demanding “a more severe punishment”<sup>4</sup>. Dink was acquitted of another charge in February 2006. In September 2006 he was charged for a third time with ‘denigrating Turkishness’ – charges that were still pending at the time of his death.

Dink had received a number of death threats. He had told friends that he felt especially intimidated by Veli Kucuk, a former general and radical nationalist who would appear at his trials together with Kerincsiz. However, as Dink wrote in his final article<sup>5</sup>, he didn't believe that his life was really under threat. “Yes, I may perceive in myself the spiritual unease of a pigeon, but I do know that in this country people do not touch pigeons.” On this point, he was tragically mistaken.

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<sup>3</sup> Article 301 is a controversial article of the Turkish penal code. It was introduced as part of a package of penal-law reform in the process preceding the opening of negotiations for Turkish membership of the European Union (EU). It makes it a crime to insult “Turkishness”.

<sup>4</sup> <http://www.bianet.org/english/kategori/english/104374/a-portrait-of-a-nationalist-lawyer-kemal-kerincsiz>

<sup>5</sup> <http://robinkirk.com/wordpress/archives/4>

Following the assassination, hundreds of people gathered in front of *Agos*. For the first time “We are all Armenians”<sup>6</sup> became an expression of solidarity.

At Dink’s funeral on 23 January, the coffin was brought first outside the *Agos* office, where his wife Rakel gave an emotional speech: “Unless we can question how this baby grew into a murderer, we cannot achieve anything.”<sup>7</sup> Remembering her husband she said: “You have left your loved ones, but you have not left your country.” Dink’s coffin was then driven to the Armenian Patriarchate, followed by a huge crowd. *Hurriyet* described the scene on 24 January 2007:

“Following the 11:00 ceremony for Dink at the *Agos* offices, the long slow cortege of perhaps one or even two hundred thousand people began the 8 kilometer march behind the hearse carrying Dink’s coffin.”<sup>8</sup>

It was a demonstration of a size never seen before by supporters of the Turkey that Dink had been fighting for, with Turks, Kurds, Armenians and other groups side by side.

But there is another Turkey, too, and it also showed its face. The murderer Ogun Samast, a 17-year old from the Black Sea city Trabzon, was soon arrested on 20 January 2007 in the Black Sea town of Samsun. However, according to *Radikal* newspaper<sup>9</sup> (2 February 2007) and other media, he was treated as a hero at the gendarmerie station in Trabzon, with police lining up to have their photos taken beside the murderer and the Turkish flag. Later, nationalist groups in Istanbul gathered in a counter-demonstration on 4 February 2007, shouting “We are all Turks, we are all Mustafa Kemals”<sup>10</sup>. The white beret that Samast wore when he assassinated Dink became a symbol for his sympathisers.

The murder trial began on 2 July 2007 in Istanbul, with 18 defendants. The case is ongoing. On 20 March 2008, two soldiers appeared in a Trabzon court to testify that they had been clearly warned about a plot to assassinate Hrant Dink and that they had informed their superior, Trabzon Provincial Gendarmerie Commander Ali Oz. However, nothing was done. After the murder, they had been pressured by their superiors to deny that they had been aware of the plot.

### **Echoes of a coup (March 2007)**

In March 2007, the current affairs weekly *Nokta* published a series of articles investigating the military’s activities against the ruling AKP government.

On 29 March, *Nokta* published excerpts of a diary, alleged to have been written by Admiral Ozden Ornek, the former navy commander, and left inadvertently on his laptop. The diary entries contain detailed plans for a military coup, prepared jointly by the commanders of the army (Aytac Yalman), navy (Ornek himself), the air force (Ibrahim Firtina) and the gendarmerie (Sener Eruygur) in 2004. According to the diary, it was only the opposition of the Chief of Staff at the time, Hilmi Ozkok, which prevented the coup plans from being put

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<sup>6</sup> <http://news.bbc.co.uk/2/hi/europe/6281193.stm>

<sup>7</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=100902>

<sup>8</sup> <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=5829273>

<sup>9</sup> <http://www.radikal.com.tr/haber.php?haberno=211902>

<sup>10</sup> <http://www.haberler.com/hepimiz-ermeniyiz-sloganina-protestolar-devam-haberi/>

into action. The code name for the coup was “Blond Girl”. Later, these dairies suggest, Sener Eruygur had begun to plan another coup, code named “Moonlight.”

Another *Nokta* article on 5 April was based on a leaked report prepared by the Office of the Chief of General Staff. It described a secret categorization of press outlets and journalists into pro-military and anti-military groups. The claim was not denied by the military, although internal investigations were undertaken to uncover who was responsible for leaking the ‘blacklist.’

In a speech on 11 April, General Chief of Staff Yasar Buyukanit alluded to the publication of coup plans from the alleged diary by accusing some media outlets of using “information and documents, the sources of which are questionable” and “tampering with pictures to lead to different meanings” in order to “shape the political developments in the country and divert attention from the real problems.”

On 12 April, *Nokta*’s offices were raided by the police in a 3-day operation at the request of the military prosecutor. Subsequently, the owner of the magazine decided to shut it down altogether. Editor-in-chief Alper Gormus gave a press conference on 21 April 2007:

“I did not decide to close the journal, but I can tell you my impressions. The owner of the journal Ayhan Durgun did not mention to me any economical or political pressure. On the other hand he was feeling some kind of tension for the last few weeks. None of the politicians in Turkey said even a sentence about the pressures on *Nokta*. Under these circumstances there was no way not to feel pressure.”<sup>11</sup>

Ragip Duran, a former *Nokta* journalist, referred in Today’s Zaman<sup>12</sup> on 21 April 2007 to *Nokta*’s closure as “an extremely negative situation. This clearly shows that there is no freedom of expression in Turkey.” Human Rights Watch reported after the raid against *Nokta*:

“The military prosecutor issued the search warrant on the basis of an article published by *Nokta* on April 5 examining alleged links between the Office of the Chief of Staff and some civil society organizations.<sup>13</sup> This article was of great topical interest given that large anti-government rallies were then being organized by some civil society organizations. *Nokta* reproduced, as the main source for the report, a 2004 document alleged to come from the intelligence department of the Office of the Chief of Staff that revealed the military’s links with some civil society organizations and universities, and *Nokta* questioned whether in the present situation there were also elements of civil society that were not really ‘civilian’.”<sup>14</sup>

Alper Gormus is currently facing trial for slander. Thus, the outcome of the *Nokta* affair is that it is the journalists, not the potential coup plotters, who are under investigation.<sup>15</sup>

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<sup>11</sup> [http://www.tihv.org.tr/EN/index.php?option=com\\_content&task=view&id=306&Itemid=75](http://www.tihv.org.tr/EN/index.php?option=com_content&task=view&id=306&Itemid=75)

<sup>12</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=109073>

<sup>13</sup> “Gunumuzde sivil eylemler ne kadar sivil?” (“How civilian are the civil [society] demonstrations today?”), *Nokta* magazine, (Istanbul), April 5, 2007.

<sup>14</sup> <http://hrw.org/backgrounder/eca/turkey0707/3.htm>

<sup>15</sup> See also: Rumeli Observer: 101 on the Turkish deep state – *Nokta* (March 2008).

### **The generals' warning (April 2007)**

The idea that the AKP is a threat to the secular order is regularly repeated by the opposition political party, the CHP, parts of the bureaucracy, Kemalist NGOs such as the *Ataturk Thought Association* and Kemalist newspapers such as *Cumhuriyet*.

In a speech to the War Academy in Istanbul on 13 April 2007, then Turkish president Ahmet Necdet Sezer, whose 7-year mandate ended on May 16, accused the AKP of trying to undermine the secular order.

“The political regime of Turkey has not faced such danger since the founding of the republic... The activities aimed against the secular order and efforts to bring religion into politics are raising social tensions.”

On 24 April 2007, the AKP announced that Abdullah Gul would be its presidential candidate. Gul had been Prime Minister in 2002 and then Deputy Prime Minister and Foreign Minister, and a strong champion of Turkey's EU integration effort. His selection was followed by a harsh reaction from the military, the president and Kemalist politicians, many drawing attention to the fact that his wife wore the headscarf.

On 27 April, the Turkish military published a dire warning by way of a late-night posting on its website. The general staff declared its opposition to the nomination of Abdullah Gul as presidential candidate. It reminded the Turkish government of the military's role as “staunch defender of secularism.” It warned that it would display its “position and attitudes when it becomes necessary.”

Mass demonstrations against Gul followed in several cities. The organiser of the Ankara demonstrations was Sener Eruygur, president of the Ataturk Thought Association, retired general and former head of the gendarmerie (one of the four generals who, according to *Nokta*, planned for a coup in 2004).

However, the intimidation failed. The AKP opted for early elections, which took place on 22 July 2007, winning a landslide victory with almost 47 percent of the vote – an increase of 12.4 percent. Abdullah Gul was duly elected president by Parliament in September 2007. The general election was widely interpreted as a showdown between the military establishment, with its traditionally unchallengeable authority, and the will of the Turkish people. Omer Erzeren commented on qantara on 30 July 2007:

“The election results are a slap in the face for the military and opposition parties, who thought they could score with nationalist slogans and militaristic poses.”<sup>16</sup>

It looked as if Turkish democracy had passed this testing time successfully, and could now look forward to five years of stable government. However, the fight back by the nationalist establishment was not long in coming.

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<sup>16</sup> [http://www.qantara.de/webcom/show\\_article.php/\\_c-476/\\_nr-825/i.html](http://www.qantara.de/webcom/show_article.php/_c-476/_nr-825/i.html)

### **A liberal promise (September 2007)**

After this clear popular verdict, Turkey's political turmoil appeared to be at an end. The AKP had a comfortable majority in parliament. In August, the Government announced that work would begin on a new, so-called "civilian" constitution, based on the protection of individual rights rather than the statist ideology that had prevailed in the Turkish Republic since its founding. There had been widespread calls for constitutional reform from Turkish civil society, and of course from the EU.

The AKP charged Ergun Ozbudun, a well-known professor of constitutional law at Bilkent University in Ankara, to set up a working group to prepare a draft constitution. Ozbudun chose Levent Koker, Yavuz Atar, Fazil Husnu Erdem, Serap Yazici and Zuhtu Arslan. While the group members are not politicians, they can best be described as liberal academics with an interest in introducing European standards into Turkey. (Hurriyet, 31 August 2007).<sup>17</sup>

The working group presented its draft constitution<sup>18</sup> in September 2007. Consultations with the bar associations, universities, NGOs and journalists followed. The Ozbudun draft was based on a very different political philosophy than the current constitution. This was obvious right from the preamble. The *current* constitution begins as follows:

"In line with the concept of nationalism and the reforms and principles introduced by the founder of the Republic of Turkey, Ataturk, the immortal leader and the unrivalled hero, this Constitution, which affirms the eternal existence of the Turkish nation and motherland and the indivisible unity of the Turkish state, embodies..."

The Ozbudun constitution proposes a very different preamble:

"This constitution, which guarantees universal rights and freedoms stemming from human dignity that aim at enabling individuals to live together in peace and justice, which considers differences a cultural wealth and rejects all varieties of discrimination, which takes national unity as the basis and devises rules and institutions of the democratic and secular republic on the basis of human rights and the rule of law, was adopted with the free will of the Turkish nation as a symbol of devotion to the target of a modern civilization set by the founder of the republic, Mustafa Kemal Ataturk."<sup>19</sup>

There are many other important changes:

- Fundamental rights and freedoms can only be limited under conditions permitted by the European Convention on Human Rights (ECHR).
- The rules governing party closure are amended to make shutting down a party more difficult. Under the new proposed constitution, a party can only be proscribed if its programme is clearly contrary to the constitution, and after it has received a formal warning. Even in the case of a party's closure, its parliamentarians will not have their mandates revoked.
- An amendment to the composition of parliament will ensure that even small parties will be represented. Turkey's parliament has 550 seats. Under the new system, 450

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<sup>17</sup> <http://arama.hurriyet.com.tr/arsivnews.aspx?id=7191035>

<sup>18</sup> <http://www.ntvmsnbc.com/news/419856.asp>

<sup>19</sup> <http://www.cnnturk.com/Turkiye/anayasa.asp>

will be appointed through direct election by constituencies, but the remaining 100 will be chosen through proportional representation. The distribution of these 100 seats will reflect the overall percentage of votes each party received in the election. Winning 1 percent of the national vote will therefore be enough for parliamentary representation.

- The 1982 constitution's definition of 'Turkishness' is revised. It currently reads: "Everyone bound to the Turkish State with the bond of citizenship is a Turk". Under the new proposal: "Everyone bound to the Turkish Republic with the bond of citizenship is called a Turk regardless of religion or race."

From the moment it was first presented, the draft met with intense political opposition. As the leading liberal columnist Sahin Alpay wrote:

"The fierceness of the opposition and the absurdity of the accusations raised against the draft are basically indicative of the military-civilian bureaucracy's resistance to a possible loss of constitutional privileges, and have absolutely nothing to do with the defence of secularism."<sup>20</sup> (Sahin Alpay, 1 October 2007)

Ozbudun himself noted:

"There are circles who claim that an Islamic state will be founded in Turkey and that there is a threat of separatism in Turkey. All such claims are nonsense. Such rumours arose due to the fact that certain circles are fearing a loss of power due to the new draft Constitution."<sup>21</sup> (Ozbudun in Today's Zaman)

AKP Deputy Chairman Dengir Mir Mehmet Firat has stated that the current Constitution, given it was drafted after a coup in 1982, is "antidemocratic and anti-individual". He added:

"Yet they now claim that the AK Party cannot amend the Constitution. They imply that we are risking a *coup d'état* if we attempt to change it."<sup>22</sup> (Today's Zaman)

AKP deputy chairman Firat also announced at a conference in the US in early March 2008 that the AKP would soon table the new draft constitution for discussion before the parliament's Constitutional Commission<sup>23</sup> (Today's Zaman).

But does the Government have the numbers to change the constitution? There are 550 seats in Turkey's Grand National Assembly, two of which are currently vacant. The AKP holds 340 of those seats.

Article 175 of the constitution outlines the procedure for amending the constitution and when a referendum is required:

(3) The President of the Republic may refer the laws related to the Constitutional amendments for further consideration. If the Assembly adopts the draft law referred by the President by a two-thirds majority, the President may submit the law to referendum.

(4) If a law is adopted by a three-fifths but less than two-thirds majority of the total number of votes of the Assembly and is not referred by the President for further

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<sup>20</sup> <http://www.todayszaman.com/tz-web/yazarDetay.do?haberno=123521>

<sup>21</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=135598>

<sup>22</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=135598>

<sup>23</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=135598>

consideration, it shall be published in the Official Gazette and shall be submitted to referendum.

A two-thirds majority in parliament requires 367 affirmative votes; a three-fifths majority only 330 votes. Even without the support of other parties, the government has the numbers for a three-fifths majority – the lower threshold where a referendum is mandatory.

### **Parties in the Grand National Assembly<sup>24</sup>**

<b>Party</b>	<b>Number of Seats</b>
AKP	340
CHP	98
MHP	70
DTP	20
DSP	13
Independents	5
BBP	1
ODP	1
Vacant	2
<b>Total</b>	<b>550</b>

The AKP has already succeeded in one referendum on 21 October 2007, in which 69 percent of the population voted in favour of the government's proposal to have the president elected by popular vote.

There is therefore every chance that the government could succeed in changing the constitution. If anything is holding it back, it is fear of the reaction from the military establishment. In a democracy aspiring to join the European Union this is not a good reason.

### **Kurdish battles (October 2007)**

In October 2007, a series of terrorist attacks in the South East sent political tensions in Turkey to a dangerous level, dominating the political agenda and the news headlines.

On 7 October, 13 Turkish soldiers were killed<sup>25</sup>, including 1 officer, in Sirnak province, after Turkish soldiers had shot dead a suspected PKK terrorist earlier in the day. On 21 October, 12 Turkish soldiers were killed<sup>26</sup> and 8 abducted during clashes in Hakkari. The 8 were later released.

Against this background, the Constitutional Court on 16 November 2007 granted a request by the Chief Prosecutor to examine whether to close the (pro-)Kurdish Democratic Society Party (DTP), which had entered the parliament in the June 2007 elections and also had many elected local officials. Chief Public Prosecutor Abdurrahman Yalcinkaya had listed 221 party members, among them eight current parliamentarians, to be banned from politics for five years.

<sup>24</sup> [http://www.tbmm.gov.tr/develop/owa/milletvekillerimiz\\_sd.dagilim](http://www.tbmm.gov.tr/develop/owa/milletvekillerimiz_sd.dagilim)

<sup>25</sup> <http://english.aljazeera.net/NR/exeres/B8196DC9-5887-49D1-BF24-5ED7B5DDBB452.htm>

<sup>26</sup> [http://www.nctimes.com/articles/2008/01/04/news/nation/15\\_05\\_561\\_3\\_08.txt](http://www.nctimes.com/articles/2008/01/04/news/nation/15_05_561_3_08.txt)

Tensions rose further. On the evening of 4 January 2008<sup>27</sup>, five people were killed and 67 injured when an improvised explosive device exploded outside a school in the centre of Diyarbakir. Calls for a cross border operation into Iraqi territory grew more insistent. On 21 February 2008, the Turkish military began its operation against the PKK in Northern Iraq<sup>28</sup>.

### **Ergenekon arrests (January 2008)**

On 21 January 2008, news broke of a major operation by Turkish police against an ultra-nationalist network known as Ergenekon. Commentators have argued that a number of political assassinations originally assumed to be unconnected are in fact linked to leading figures in this network, including the assassinations of a priest, Father Andreas Santoro, in Trabzon (2006), Hrant Dink in Istanbul (2007) and a judge in Ankara in 2006.

The name Ergenekon (which comes from an old Turkish legend about the origins of the Turkish people in Central Asia) was made public in a book by journalists Can Dunder and Celal Kazadagli in 1997. In their book, entitled *Ergenekon – The State inside the State*, a former Turkish naval general (Erol Mutercimler) told the authors that he had first learned in 1971 of the existence of:

“an organization above the Government, the General Staff and the bureaucracy. It was founded on the initiative of the CIA and the Pentagon after 27 May [1960, the first military coup].”

He also told Dunder that he started to investigate and discovered that “there were generals, security personnel, professors, journalists, businessmen, average people inside it. Small units that we nowadays call “gangs” are used as triggers by the larger organization called Ergenekon.” Dunder notes that such entities were set up in other NATO countries as well during the Cold War, but in Turkey’s case, it was never dismantled.

A serious investigation against Ergenekon only began in the summer of 2007 when munitions and weapons<sup>29</sup> were found in a house in the Umraniye district of Istanbul. Little was known by the public until January 2008 because of a press embargo imposed to safeguard the investigation. Then on 21 January 2008, 37 suspects were arrested on suspicion of being members of an ultra-nationalist network<sup>30</sup> (*Bianet*).

In March 2008, journalist Samil Tayyar, Ankara correspondent of the *Star* daily newspaper, published another book, *Operation Ergenekon*, giving an account of the deeds and ideology of this ultra-nationalist network.<sup>31</sup> In an interview on 2 March, Tayyar explained his findings:

“Ergenekon is a structure targeting the Justice and Development Party (AKP) and the EU process, using all kinds of illegal methods to reach their aims.”<sup>32</sup>

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<sup>27</sup> <http://www.jamestown.org/terrorism/news/article.php?articleid=2373880>

<sup>28</sup> <http://www.reuters.com/article/topNews/idUSANK00037420080222?feedType=RSS&feedName=topNews>

<sup>29</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=132601>

<sup>30</sup> <http://www.bianet.org/english/kategori/english/105802/more-detentions-and-arrests-in-ergenekon-case>

<sup>31</sup> Samil Tayyar, *Operasyon Ergenekon*, March 2008.

<sup>32</sup> Ayse Karabat, ‘EU process victim of and solution to Ergenekon’, interview with Samil Tayyar, 2 March 2008.

In his book, Tayyar also claims high-ranking generals attempted to organise coups in 2003 and 2004 against the AKP government.

“The normalization process which began when in 2004 the coup (planning) generals retired from the Turkish General Staff, created a more secure environment for Turkish democracy. But when the opposition on the anti-AKP and anti-EU axis lost hope for a coup or a military warning to the government, they went underground from 2005 onwards.” (*Operation Ergenekon*, p. 11)

Tayyar alleges that many of the political assassinations of recent years are linked to this organization. The strategy of this group, he claims, was not only to organize attacks against the government, liberal intellectuals and minority leaders, but also to attack Kemalist newspapers and intellectuals and then blame Islamists.

Oktay Yildirim, a retired general whose fingerprints, according to Tayyar, quoting the prosecution, were found on grenades discovered in the Umraniye raids, allegedly had detailed information about Ergenekon’s structure on his confiscated computer. This led to more raids in Bursa and Eskisehir, and the collection of further information. This has brought about the arrest of up to 50 persons to date, including former military personnel, nationalist lawyers, politicians and journalists.

According to Tayyar, the investigation would not have been possible without collaboration between civil and military forces. In the interview with Sunday’s Zaman on 2 March<sup>33</sup>, he underlines that within the armed forces the unease about Ergenekon had become stronger:

“I think (Chief of General Staff Gen. Yaşar) Buyukanit, who will retire this August, indirectly contributed to the operation against Ergenekon... This is why there is a very serious reaction from the nationalists toward Buyukanit; they are not happy about his impartiality. Actually when you look at transcripts of the telephone conversations of the Ergenekon detainees, you can see the heavy cursing in them against Buyukanit.”

On 21 March 2008<sup>34</sup>, seven more persons were arrested, including Dogu Perincek, chairperson of the Workers’ Party, Ilhan Selcuk, columnist at the Cumhuriyet newspaper and Kemal Alemdaroglu, a former rector of Istanbul University.

Who are these people now arrested and charged with forming a terrorist organization with the aim of overthrowing the current government?

### *Veli Kucuk*

One prominent figure who was arrested is Veli Kucuk. He is widely considered by the press to be a former leader of JITEM (Jandarma Istihbarat ve Terorle Mucadele), the Gendarmerie Intelligence and Anti-Terror unit which played a role in the fight against the PKK in South East Anatolia.

It has never been officially acknowledged that JITEM even exists. However, Kucuk himself was quoted in Today’s Zaman on 30 January 2008<sup>35</sup> as acknowledging his own role as “founder of JITEM.” Kucuk was active during the war against the PKK.

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<sup>33</sup> <http://www.sundayszaman.com/sunday/detaylar.do?load=detay&link=3266>

<sup>34</sup> <http://www.bianet.org/english/kategori/english/105802/more-detentions-and-arrests-in-ergenekon-case>

In an interview with Today's Zaman on 30 January 2008<sup>36</sup>, informant Abdulkadir Aygan, who was allegedly involved in JITEM activities for many years, talked about Kucuk's role as JITEM group commander in the years 1990-91:

"JITEM's headquarters was in a large building with two floors. All personnel in the building used to wear civilian clothes. The vehicles used in official service had civilian plates; however, these were the gendarmerie's registered vehicles. It is certain that he [Kucuk] was one of the founders of the organization. However, his assertion that he founded JITEM alone is not accurate. I think that he is trying to protect the masterminds and prove that he is loyal to them."

JITEM features in at least two official reports as well. One is the report from January 1997 by Kutlu Savas, special rapporteur of the Prime Minister's Office about the Susurluk scandal<sup>37</sup> which exposed the connections between the security forces, politicians and organised crime in operations against the PKK. The Savas report<sup>38</sup> argued that JITEM existed:

"Even if the Gendarmerie's high command continues to deny it, the existence of JITEM is an unavoidable fact. It may be the case that JITEM no longer exists, that it was disbanded, that its personnel was transferred to other units, that the documents were archived. There are however, a number of agents who served in JITEM, who are alive today. The existence of JITEM was moreover, no mistake. JITEM was formed out of necessity."<sup>39</sup>

In 2002, Veli Kucuk wrote on the website [www.ozturkcler.com](http://www.ozturkcler.com) ("the true Turks"), that "the way of the great Turkish nation is through Ergenekon". The site was maintained by Sedat Peker who Turkish media claim had served with Kucuk in the gendarmerie in Kocaeli in the 1990s. In 2007, Peker was sentenced to 14 years imprisonment for involvement in organised crime. He is currently in prison and was recently interrogated by the prosecutor in the Ergenekon investigation.

Many Turkish papers also reported that the investigations have revealed a plan to assassinate Nobel Prize-winning author Orhan Pamuk. According to daily *Posta*, Veli Kucuk had tried to arrange for a hit man to target Pamuk through the contacts of a former army sergeant, Muhammed Yuce.

### *Kemal Kerincsiz*

Lawyer Kemal Kerincsiz is another key figure in the nationalist movement in Turkey, a revered figure among nationalists<sup>40</sup> and founder of the Great Union of Lawyers (Buyuk Hukukcular Birligi), a right wing NGO. In January 2008, he was arrested for being a member of "a terrorist organization" with the aim of promoting instability.

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<sup>35</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=132811>

<sup>36</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=132811>

<sup>37</sup> [http://en.wikipedia.org/wiki/Susurluk\\_scandal](http://en.wikipedia.org/wiki/Susurluk_scandal)

<sup>38</sup> <http://mitglied.lycos.de/Janjan/SusurlukberichtX.htm>

<sup>39</sup> Bandenrepublik Türkei? Der Susurluk-Bericht des Ministerialinspektors Kutlu,  
<http://mitglied.lycos.de/Janjan/SusurlukberichtX.htm>

<sup>40</sup> <http://www.bianet.org/english/kategori/english/104374/a-portrait-of-a-nationalist-lawyer-kemal-kerincsiz>

According to Bianet, Kerincsiz

“first came to public attention when he filed a complaint to stop a conference entitled ‘The Ottoman Armenians in the Period of the Declining Empire’ scheduled for May 2005. The conference finally took place on 23 September, but only because the organisers were able to circumvent the ban by hosting the conference at a venue not mentioned in the ban.”<sup>41</sup>

Kerincsiz used the sections of the Penal Code that curtail freedom of expression, such as Art. 301, to sue journalists, authors and academics. Ioannis Grigoriadis describes this strategy in a paper in October 2006:

“Kerincsiz skillfully exploited the remaining illiberal traits of the Turkish criminal legislation, as well as the failure of judicial authorities to readjust the interpretation and implementation of existing legislation on liberal lines... Kerincsiz targeted an increasing number of Turkish intellectuals who personified the liberal democratic face of republican Turkey, as well as minorities.”<sup>42</sup>

Kerincsiz and the Great Union of Lawyers were responsible for most of the trials based on article 301. These included the trials of:

- Nobel prize winning author Orhan Pamuk, charged in 2005 for comments on the Armenian and Kurdish questions;
- Turkish-Armenian journalist Hrant Dink, charged repeatedly in 2005 and 2006 for denigrating Turkishness;
- Writer Elif Safak, charged in September 2006 for passages of her book “The Bastard of Istanbul”;
- Journalists such as Murat Belge, Ismet Berkan, Hasan Cemal, Erol Katircioglu, Haluk Sahin, charged in 2006.

Kerincsiz also staged several demonstrations in front of the Greek Orthodox Patriarchate, demanding its expulsion from Turkey. The accusation of the prosecution is that many of these actions were closely coordinated with other parts of Ergenekon to prepare an atmosphere for assassinations.

### *Sevgi Erenerol*

Sevgi Erenerol, who was also arrested, is the spokesperson for the Turkish Orthodox Patriarchate, and sister of the current primate Papa Eftim IV. The Turkish Orthodox Patriarchate is a strange organization: it was founded during the War of Turkish Independence in 1922 by ethnic Greeks, who supported the Turkish troops<sup>43</sup> (before the time when most of

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<sup>41</sup> <http://www.bianet.org/english/kategori/english/104374/a-portrait-of-a-nationalist-lawyer-kemal-kerincsiz>

<sup>42</sup> [http://www.swp-berlin.org/common/get\\_document.php?asset\\_id=3380](http://www.swp-berlin.org/common/get_document.php?asset_id=3380)

<sup>43</sup> <http://www.turkishdailynews.com.tr/article.php?enewsid=95373>

the Greek population of Turkey was exchanged with the Turkish population of Greece under the Lausanne Treaty) to oppose the Greek Orthodox Patriarchate of Istanbul.

The church is something of a family enterprise: Sevgi's grandfather was the first patriarch. After the population exchange in 1924 – which forced all Anatolian Greeks to leave Turkey – and following the move of the Erenerol family to Istanbul, there has been no community of believers left, aside from the family. This has not stopped the church accumulating wealth with support from the authorities, however.

On 30 January 2008, *Hurriyet* wrote about “a patriarchate without community, but real estate”.<sup>44</sup> The Church currently owns three churches and many buildings in the centre of Istanbul seized from the Greek Orthodox Patriarch. Mustafa Akyol wrote on 2 February 2008 that the “mini-size but super-rich Turkish Orthodox Church has become a devotee of the most radical version of its founding ideology”.<sup>45</sup>

According to daily *Milliyet*, the Turkish Orthodox Patriarchate in Istanbul served as the place for regular Ergenekon meetings.<sup>46</sup> Erenerol has herself been linked to the extreme right for many years. She was once a candidate of the nationalist MHP for Parliament.

### *Dogu Perincek*

In March 2008 the offices of the small radical nationalist Worker's Party (IP) were raided by the police. Its leader Dogu Perincek was arrested on charges of “being a senior member of a terrorist organization and obtaining and possessing classified documents”<sup>47</sup> (*Today's Zaman*).

According to *Taraf* daily, material was found at IP's headquarters which included detailed descriptions of the security protocol for Chief of General Staff Yasar Buyukanit's visits to two cities, as well as detailed drawings of court room buildings in Ankara. This is seen by some as evidence that Ergenekon was plotting further assassinations to be blamed on “Islamists”. Perincek denies the allegations. He suggested that the Ergenekon investigation constituted an attempt to “exhaust the Turkish Army”<sup>48</sup> (*Today's Zaman*) with unfounded allegations.

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The number of individuals implicated in the Ergenekon investigation is growing by the day. The list of those arrested reads like a who's who of extreme right-wing nationalists, hardline Kemalists, retired military, mobsters and nationalist intellectuals.

- Ergun Poyraz: His bestselling book “Children of Moses: Tayyip and Emine” suggests that Prime Minister Erdogan's rose to power as part of a “Zionist conspiracy.” He wrote a similar book about Abdullah Gul. As reported by *Today's Zaman* on 31 March 2008, a CD found at the nationalist Workers Party (IP) headquarters reveals that Poyraz received payments from JITEM!<sup>49</sup>

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<sup>44</sup> <http://www.hurriyet.com.tr/gundem/8129596.asp?gid=229&sz=82255>

<sup>45</sup> <http://www.turkishdailynews.com.tr/article.php?enewsid=95373>

<sup>46</sup> <http://www.milliyet.com.tr/2008/01/28/son/sontur04.asp?prm=0,424082999>

<sup>47</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=137678&bolum=101>

<sup>48</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=137678&bolum=101>

<sup>49</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=137678>

- Fikri Karadag: a retired military officer, today officially leader of the ultranationalist Association for the Union of Patriotic Forces.
- Muzaffer Tekin: arrested earlier in the context of the investigation of the assassination of Judge Mustafa Yucel Ozbilgin, and injuring 4 other members of the State Council in Ankara in May 2006, which triggered anti-AKP demonstrations: Kemalist media had claimed that the murder was the result of “Islamic fundamentalism”.<sup>50</sup>
- Sedat Peker, Sami Hostan (also called ”Sami the Albanian”), Ali Yasak (“Drej Ali”) and other alleged ultranationalist mafia figures.

According to numerous newspaper reports (such as *Stargundem*<sup>51</sup> on 26 January 2008), the current investigation has already found links between the Ergenekon group and the attack on the State Council in 2006. The Istanbul Chief Public Prosecution has received a photo in which retired general Veli Kucuk is seen with Alparslan Arslan, the murder suspect currently on trial. Phone calls between the two, from before the attack, have also allegedly been recorded.

According to a *Bianet* report on 6 March 2008, the Ergenekon gang is suspected of involvement in bomb attacks on the Cumhuriyet newspaper in 2006 as well as the murder of historian Necip Hablemitoglu in December 2002. Durmus Anucin, one of those arrested, has apparently told the prosecution that he and Ibrahim Cifti were responsible for Hablemitoglu’s murder. Cifti was subsequently murdered himself. The hand grenades used in Cifti’s killing are reportedly of the same series as those discovered in the arsenal in Umraniye in 2007.

On April 1 2008, Lale Sariibrahimoglu commented in Today’s Zaman:

“Today, those linked to the Ergenekon gang come from every walk of life and are ultranationalists, anti-European and believe that democratic reforms have been threatening the state’s traditional sovereignty at the expense of enlarging citizen sovereignty.”<sup>52</sup>

According to numerous newspaper reports, the group was preparing a series of bomb attacks aimed at stirring up chaos ahead of a planned coup against the government in 2009. This would have brought Turkey’s democratisation process and EU accession negotiations to a precipitous end.

What is the significance of this investigation? For optimists among Turkey’s commentators, this investigation offers a vital opportunity to finally get to the bottom of a series of never investigated crimes and to strengthen the rule of law in Turkey. Pessimists among Turkish observers note that what is visible today is still only the tip of an iceberg. Such pessimists doubt that a full-fledged crackdown will ever take place. As *Radikal*’s Gokhan Ozgun notes, the Ergenekon gang is a large and dangerous formation, stretching beyond the limits of one’s view of a “gang”.

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<sup>50</sup> See: <http://www.iht.com/articles/2006/05/18/news/turkey.php>.

<sup>51</sup> [http://www.stargundem.com/news\\_in\\_english/4023.html](http://www.stargundem.com/news_in_english/4023.html)

<sup>52</sup> <http://www.todayszaman.com/tz-web/yazarDetay.do?haberno=137803>

### **The headscarf and the constitution (February 2008)**

Following the 22 July 2007 elections and Abdullah Gul's election as president, the AKP prepared to amend the Constitution in a way that would enshrine freedom of dress at universities. This was easier said than done, as the legal situation in Turkey is far from clear. Banning students to enter university grounds wearing headscarves is a relatively new phenomenon. Until 1998, though with short-lived periods of restriction, girls could attend university with their headscarves.

Ataturk passed a Hat Law in 1925 ordering men to replace the oriental fez with Western looking hats, as a symbol of modernity. Women's clothing was not legislated.

After the military coup in 1982, the Higher Education Board (YOK) issued a written communiqué prohibiting female students from entering university wearing the headscarf; universities enacted this new regulation within their senates. When the Motherland Party (ANAP) had a majority in Parliament in the late 1980s, an addendum was passed to the YOK law attempting to dent this regulation.

The Constitutional Court annulled the said addendum (Addendum 16) which ANAP introduced to explicitly state that girls are permitted to wear headscarves for religious reasons in university. While another Addendum (Addendum 17), calling for general freedom of dress in university, was not annulled, the "rationale" of the Court's decision stated that it was not applicable for the headscarf.

From 1989 onwards, restrictions on wearing the headscarf first gradually disappeared. However, after the 'post-modern' coup in 1997, the Constitutional Court, in its decision shutting down the Welfare Party, made an 'aside' suggesting that headscarves be banned from universities. This statement became the justification for the renewed vigour to enforce the ban.

The new regime was first implemented on February 23, 1998 at Istanbul University, when girls with headscarves and boys with beards were prohibited from attending classes.

What now constitutes the 'ban' is largely based on rulings of the Constitutional Court that interpret the wearing of a headscarf in university to be a violation of secularism and thus unconstitutional. And the legislative has been denied a say in the matter. Paradoxically, the lack of any clear legal basis for the ban has made it difficult for the government to overturn it now.

Two constitutional amendments using careful, non-inflammatory language<sup>53</sup> (BBC news) were passed in parliament in January 2008 with votes of AKP (340 MPs) and the Nationalist Action Party (MHP), which has 70 MPs.

The first amendment was to Article 10 of the Constitution, on equality before the law, which deals with equal rights and non-discrimination. It requires state organs and administrative authorities to treat people equally in all their proceedings, irrespective of religion, political opinion or any other ground. The amendment strengthened this provision by stating that the principle of equality also applied to "the provision of all public services".

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<sup>53</sup> <http://news.bbc.co.uk/2/hi/europe/7236128.stm>

“State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings **and in all activities pertaining to the provision of public services.**” [The amendment is marked **bold.**]

Article 42, on the Right and Duty of Training and Education, states that no-one shall be deprived of the right of learning and education. The amendments added “for reasons not explicitly mentioned by law”, and provided that any limitation must be spelt out in law.

“No one shall be deprived of the right of learning and education **for reasons not openly mentioned by laws. The limits of the use of this right will be determined by law.**”

In its attempt to be sensitive in its use of language and avoid explicit reference to the headscarf, the government has created an ambiguous situation. Sabih Kanadoglu, honorary chief prosecutor of the Supreme Court of Appeals, has argued that the amendments have no impact on the headscarf ban:

“The constitutional amendment is the reiteration of the clauses already existing in Articles 10 and 42 of the Constitution.”

However, a retired military judge, Umit Kardas, has stated the opposite; that even without this amendment, “*there is nothing that can prevent the headscarf on campus.*”<sup>54</sup> (Today’s Zaman) In this situation, it appears that even the AKP is unsure of whether further legal changes are needed to lift the ban. Burhan Kuzu, AKP deputy and chairman of Parliament’s Constitutional Commission, asserted both that the amendments were sufficient and that the AKP was willing to do more:

“We have made it clear that the right to high education cannot be restricted for any reason unless specified by the law. Currently there is no law that restricts wearing the headscarf at universities. Therefore those arguments are null and in vain.”

“We have to wait and see how universities take the amendment. If there emerges some complexity or some reluctance in the implementation, then we can consider revisions to Article 17 (referring to Addendum 17). But I am confident that the amendments on Articles 10 and 42 of the Constitution are very open and will be implemented with no problem.”<sup>55</sup> (Today’s Zaman)

Some commentators claim there would have to be a revision of Addendum 17 of the law governing the Board of Higher Education (YOK) in order to lift the ban. The AKP is believed to be planning such an amendment but it has not yet brought the amendment before parliament.

In fact, it appears that so far, the constitutional amendments have had little effect on the ground. Nearly 100 of the 116 universities in Turkey are still enforcing the ban, arguing that an amendment to YOK Addendum 17 and a definition of the shape of the headscarf are needed before the new rule can be applied.

Despite its fairly innocuous language and its ambiguous legal effect, the attempt to lift the headscarf ban has triggered condemnation from some sections of Turkish society, including members of the judiciary, business organizations and academics. Istanbul University (IU)’s

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<sup>54</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=133847>

<sup>55</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=133847>

rector and faculty have spoken out against lifting the ban. On 31 January 2008<sup>56</sup>, Rector Mesut Parlak announced at a faculty meeting that proponents of headscarf reform were endangering Turkey.

After the amendments were accepted at the parliament general assembly, the CHP applied to the Constitutional Court to have the constitutional amendments overturned on the grounds that they violate the principle of secularism enshrined in Article 2. The “characteristics of the Republic” defined in Article 2 cannot be amended or even proposed for amendment. In March 2008 the Court already agreed to take up the case.

“The amendments do not aim to bring freedom but permit wearing the ‘turban’, a religious symbol, at universities. The amendments would lead to an erosion of the separation of state and religion.”<sup>57</sup> (CHP Petition to Constitutional Court)

On the other side, a number of liberal academics have signed a petition calling for the extension of basic freedoms and democracy. The petition was drafted by Fuat Keyman of Koç University and Cengiz Aktar of Bahcesehir University:

“It holds true, and we assert today, as we have always done, that denying an 18-year-old girl who has successfully graduated from high school and who has done well on the university [entrance] exam entry into universities because of her choice of dress is compatible neither with the principle of the right to education, individual rights and freedoms, the principle of secularism, nor with the democratic system. We see no direct cause and effect relation between freedom for the headscarf and the abrogation of secularism.”<sup>58</sup> (Today’s Zaman)

### **A judicial coup (March 2008)**

On January 17 2008, Chief Public Prosecutor of the Supreme Court of Appeals, Abdurrahman Yalcinkaya warned the AKP that its attempt “to lift the headscarf ban” would have serious consequences. In a written statement, he warned that the reform would generate social discord, and that universities would become centres of anti-secular activity. He noted that the judiciary would take action against any political parties whose policies led to such a situation:

“The chief prosecutor of the Supreme Court of Appeals stated that lifting the ban on the headscarf would harm the principle of secularity. The prosecutor stated: ‘the sanctions, for parties that do not comply with the rules, are obvious.’”<sup>59</sup> (Sabah)

Yalcinkaya’s was not the only such warning. Retired General Dogu Silahcioglu advocated closing down the AKP in a *Cumhuriyet* article on 3 February:

“Regardless of statements made, political Islam has taken over the Republic of Turkey. There is only one option left in the fight against political Islam. That is the elimination of the AKP government...”

Silahcioglu suggested a method to topple the government:

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<sup>56</sup> <http://www.hri.org/news/turkey/trkpr/2008/08-02-01.trkpr.html#05>

<sup>57</sup> <http://ipsnews.net/news.asp?idnews=41602>

<sup>58</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=133848>

<sup>59</sup> <http://english.sabah.com.tr/0596C09AE1374597BD01CAA7BA76D4FC.html>

“To file a lawsuit by the chief prosecutor in the Constitutional Court against the AKP for being the centre of anti-secular activities and to seek the closure of the AKP...”<sup>60</sup>

In fact, on 14 March 2008, Yalcinkaya applied to the Turkish Constitutional Court to close the ruling Justice and Development Party (AKP). The indictment seeks not only a ban on the party for it acts against secularism, but recommends that 71 politicians, including Prime Minister Recep Tayyip Erdogan and President Abdullah Gul, be banned from politics. On 31 March 2008, the Constitutional Court decided unanimously to accept the case. The AKP was granted one month to prepare its defence.

Most media in Turkey have condemned the proceeding. On 15 March 2008<sup>61</sup>, the daily *Radikal* headlined “It’s enough, what next?” *Taraf* daily wrote: “Put the Prosecutor on trial”. The Industrialist’s Association TUSIAD criticised the motion as “unacceptable.”<sup>62</sup> On 17 March 2008 Sahin Alp commented in Today’s Zaman: “The status quo fights back.”<sup>63</sup>

The opposition CHP noted, however, that decisions of the courts “must be respected”. Deniz Baykal, the CHP chairperson said: “the indictment is a legal one. It was not prepared with political aims and hostility; and it does not reflect emotional reactions. It was prepared objectively and within the borders of laws and responsibility.”<sup>64</sup>

The EU and European politicians have also expressed their concern. EU Enlargement Commissioner Olli Rehn said: “It is difficult to see that this lawsuit respects the democratic principles of a normal European society.”<sup>65</sup> Swedish Foreign Minister Carl Bildt said the AKP government was made up of “profound European reformers” and the prosecutor’s action “takes the concept of the bizarre application of laws to astronomical heights.”<sup>66</sup>

### **The case against AKP**

In an interview with *Referans* on 29 March, Yalcinkaya gave the impression that he would not have filed the indictment had the AKP backed off from its attempt to lift the headscarf ban, describing his January warning as sincere.”<sup>67</sup>

Yalcinkaya based the indictment<sup>68</sup> on Article 69 of the Constitution, which states in paragraph 6:

The permanent dissolution of a political party shall be decided when it is established that the statute and programme of the political party violate the provisions of the fourth paragraph of Article 68.

Article 68 paragraph 4.4. notes:

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<sup>60</sup> <http://www.turkishdailynews.com.tr/article.php?enewsid=99959>

<sup>61</sup> <http://www.radikal.com.tr/index.php?tarih=15/03/2008>

<sup>62</sup> <http://www.radikal.com.tr/haber.php?haberno=250334>

<sup>63</sup> <http://www.todayszaman.com/tz-web/yazarDetay.do?haberno=136506>

<sup>64</sup> <http://www.newstime7.com/haber/20080317/Baykal-on-closure-case-against-AKP.php>

<sup>65</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=136533>

<sup>66</sup> <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=136533>

<sup>67</sup> [http://www.referansgazetesi.com/haber.aspx?HBR\\_KOD=93559](http://www.referansgazetesi.com/haber.aspx?HBR_KOD=93559)

<sup>68</sup> <http://www.hurriyet.com.tr/gundem/8467042.asp?gid=229&sz=98705>

The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime.

The indictment acknowledges that the AKP's program and its written statutes are *not* unconstitutional (page 27). However, it writes that the AKP has "in actions and verbal statements acted against laws and the Constitution." (p. 27)

The 162-page indictment recommends that the AKP be shut down as it has become "a focal point for anti-secular activities" and has acted against the constitution. Article 2 of the constitution, an article that cannot be amended, mandates that Turkey is a secular state. In the introduction the goals of the AKP are described as follows:

"The AKP is founded by a group that drew lessons from the closure of earlier Islamic parties' and uses democracy to reach its goal, which is installing Shariah in Turkey."

"Party leader, Recep Tayyip Erdogan, and other party members targeted the Republic and its revolutions in their criticisms, and argued that 'sovereignty did not belong to people but to God, secularism would be cast aside if people desire to do so, secularism was anti-religionist,' during their membership in parties before 2001."

The principle of secularism, which the AKP is accused of threatening, is also described in the indictment:

"In a secular order, the state is impartial towards religions which does not mean that religious freedoms are unlimited. The state may make arrangements and introduce restrictions in this area for protecting rights and freedoms."

"Turkey's implementation of the principle of secularism is different than certain Western countries."

The accusation of anti-secular activity is backed up by an extensive collection of statements purported to be anti-secular. These include "anti-secular statements" by Recep Tayyip Erdogan, Prime Minister and AKP leader (from p. 27):

"Turkey, as a modern Muslim country, can be an example to the harmony of the civilizations."

"It would be wrong to bring together Islam and secularism as concepts. Because individuals cannot be secular. Some perceive secularism like a religion. If secularism is a religion, then a person cannot be a Muslim at the same time. Because a person cannot follow two religions at the same time. By definition, secularism is a system; states and not the individuals can be secular. Belonging to a certain religion is an individual choice."

"As a human being I am not secular; the state is secular. In response to that I am obliged to protect the secular order." (p. 30)

Supposedly anti-secular statements from Abdullah Gul (from p. 65) are also quoted:

“We are committed to freedom of expression and belief: everyone should be permitted to live according to his beliefs. All individuals must feel safe from fears and anxieties. They must freely express whatever they think and believe and live according to whatever they believe in. It is our mission to eliminate terror and torture and to strengthen freedoms of expression and beliefs.”

“You cannot defend restrictions on the rights of the majority when you discuss the religious rights and freedoms for the minorities in Turkey. But these are our own problems. I believe that we will solve our own problems by ourselves. Of course this would require a course of time. No one should be proud of prohibitions. No one would be honoured by defending and taking pride in prohibitions. We will settle this problem when an appropriate time comes by our own initiative... Our government is determined to eliminate all prohibitions.”

There is also a long list of allegedly anti-secular activities and publications by the AKP, including:

- The attempt to lift the headscarf ban in universities.
- The publication, by the AKP mayor of Eyup (Istanbul), of “Our beloved Prophet Muhammed” in 2006, a book which included the phrase “not to cover (hair) means to be sinful.” Ten thousand copies were printed. (p. 104)
- A booklet for newly-wed couples, issued by the AKP mayor of Tuzla municipality, which includes the suggestion that husbands can beat wives if they do not obey. (p. 104)
- The Denizli city council’s decision to change the name of a street given to a person who was killed for telling a pupil not to be late because of praying. (p. 105)

The Public Prosecutor concludes that the AKP has:

- “revealed its intention to constitute the environment in which basic principles of the Republic of Turkey will be changed by the actions mentioned above and especially by their proposals for a constitutional amendment and changes on the Law on Higher Education [abolishing ban on headscarves at universities];
- ignored the fact that religious symbols cannot be used in secular systems;
- been determined to transform the secular Republic into a new life system and a new state order and begun to divide the society into those who are religious and those who are not;
- attempted to change gradually the secular, judicial structure and to give it a new shape;
- opened the discussion the future of the regime and the Republic to debate.”

“It is a fact that the AKP will use material power to change the secular order because it exercises the government power today and this danger is not far off. This is a fact when we consider that they will adopt Shariah by enabling the society to evolve towards an

Islamic structure through what they call “consensus processes” by exploiting religion and the sacred values and through jihad aiming at transforming the state into Shariah.”

“The AKP would use jihad as required by Shariah if and when it fails to achieve the regime for which it aims. In other words, the use of jihad, i.e. violence is probable.”

“The threat posed by the policies of the AKP is clear and present. Concrete steps have been taken that may harm the civilized peace and the democratic regime in the country.”

“In this context, there is no other possibility than closing the party as the only sanction applicable and also required by the society in order to protect the society from this danger and to prevent [the AKP] from reaching its objective.”

### **A democratic choice for Turkey?**

On 31 March 2008 the 11-member Constitutional Court decided unanimously to hear the full case for the dissolution of the AKP. This is an ominous sign, and it leaves the Turkish government and Turkish supporters of European integration with a limited number of choices. But there still are choices and some are much better than others.

Essentially, there are three options open to the AKP:

1. Await the judgement and trust in the fairness of the Court;
2. Negotiate or push through constitutional changes to make closing down the AKP more difficult;
3. Pass a new liberal constitution that both makes closing down parties more difficult and breaks with the model of authoritarian (and limited) democracy that is at the heart of the post-coup 1982 constitution.

The AKP could, of course, resign itself to its fate and await the judgement of the Constitutional Court. It would then prepare its defence, trusting in the integrity of the Turkish judicial system.

This is, however, a high-risk strategy. It is also likely to fail. There is growing determination within the party to resist, using the instruments at its disposal: a more than 3/5 majority in the parliament and its continued popularity among the Turkish electorate.

A second option already discussed inside the party is to attempt to block its dissolution through amendments of those articles in the Constitution that govern the dissolution of political parties. There is already talk of “fierce bargaining” between the AKP and the nationalist MHP to find “compromises” in Ankara. There are, however, many problems with this strategy.

It is in fact highly unlikely that the AKP will find allies in parliament. If it does not and passes the changes itself, it will need to go to a referendum. If the referendum is seen to be only about a change to protect the AKP, but not about a wider reform of the constitution, it is not clear that the party will be able to mobilise the strong support required to resist the judicial assault. The real problem does not lie in specific paragraphs of the constitution. It

lies in the concept of a constitution drawn up following a coup and “protected” against elected representatives by self-appointed and unaccountable elites with a clear ideological agenda.

This leaves a third choice. It is the boldest, the most visionary and the most constructive. It means playing offence, not defence, in a game where the other side continues to want to change the rules and control the referee at the same time: to turn this into a matter of principle and to reconstruct a broad alliance.

It is the option advocated by all those in Turkey who see this confrontation as the perhaps inevitable but probably decisive battle between an authoritarian mind-set and a future democratic and pluralist Turkey. People like Umit Kardas who argued:

“The AK Party has to do something both for democracy and for its own survival. It should promise a method that would open the way for complete democratisation and freedoms. This is a fight. Turkey has now entered into a process of settling of accounts between two camps. One of the two camps will lose. If the other side wins, Turkey will enter a period of being shut off from the outside world.”

It is crucial that AKP regain legitimacy among the disillusioned liberals who had supported the Party, believing it had a principled stance and would move forward forcefully on reforms and freedoms that would benefit wide segments of the society. As long as they see AKP working for its own survival at the expense of other legitimate demands for change, they will not jump back on the bandwagon. In Kerim Balci’s words:

“Through their unwillingness to cope with the undemocratic forces, disclosed in their lack of determination to investigate the dirty relations of the state organs and mafia, they brought about their own ends. The government's latest willingness to dig into the depths of the Ergenekon junta is first of all late. It is not only late, but its incentives are ill-perceivable. Though the government was late, this doesn't mean that it deserves to be abandoned. It is our duty to support the government in stepping forward in the face of the Ergenekon junta, but it is the duty of the prime minister to make us believe (and keep his word) that he will step further steps on other freedom-related issues as well.”<sup>69</sup>

Thus the most effective choice for the AKP is to reconstruct the broad pro-democracy, pro-European alliance that the party has benefited from and led between 2002 and 2004. The best way to do this is to pass a new constitution to finally break with the legacy of the 1980 coup, while vigorously pursuing the Ergenekon investigation.

The new, liberal draft constitution drawn up by the Ozbudun commission already has provisions that make party closure more difficult. But it also offers things to minorities, reassures liberals and modern secularists about the European direction of AKP-policy and addresses a fundamental structural problem of Turkey, the ideological constraints the present constitution forces upon all political parties.

The AKP has the necessary votes to adopt the Ozbudun draft. It will then have to put it to a popular referendum. Such a course would pose a very clear choice, to the Turkish electorate and to the rest of the world.

Some might think this is too risky. Such a referendum might be interpreted as a referendum on secularism. In fact, it would be a referendum on democracy. It would also be a referendum

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<sup>69</sup> <http://www.todayszaman.com/tz-web/yazarAd.do?kn=24>

on Europe. There are some who urge “all parties” to take a step back, for fear that that a real coup might take the place of a soft, judicial one. They feel that the country could not bear the tension of a democratic confrontation.

But there is really no choice. It would also be highly risky to allow, what is effectively the disenfranchisement of the majority of the Turkish electorate, to go ahead. What signal does it send to the electorate when in an area like Diyarbakir – already tense – the parties of all elected MPs are dissolved (AKP and DTP)? Is this the signal from the Ankara establishment to people east of the capital that they need not even bother to vote?

If the government put its mind to it, it could rebuild a sufficiently broad coalition. The AKP has managed to do so before, including in the run-up to the 2007 elections. The EU should also lend its strong support to the pro-reform camp.

The best way of doing so is to make clear that a fully democratic Turkey would be heartily welcomed as a member in the future; that Turkish democracy matters to the EU and the wider Europe; and that the fate of Turkish democrats does not leave the EU cold.