The State of Political Participation of Minorities in Turkey – An Analysis under the ECHR and the ICCPR

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1. Introduction

Since the case law of the Strasbourg organs began to draw a picture of the rampant human rights violations that occurred in Turkey from the outset of the 1990s, the international community has become much more aware of Turkish law and practice regarding individual human rights and minority rights. In spite of the fact that the cases have not been dealt with in terms of minority rights, the definition of the applicants in a large number of judgments, ‘Kurdish origin – Turkish citizen Mr/Mrs. X’; the area where most of the violations have occurred, ‘south-east Turkey’; and the expressions used by the applicants such as ‘democratic solution to Kurdish question’, clearly indicate the source of the problems. However, this paper deals with a single problem: political rights.

A superficial examination of Turkish law demonstrates three sets of problems regarding the political rights of minorities in Turkey. These are: a) the right to establish and maintain a minority political party, b) free expression in a minority language during election campaigns, and c) the electoral threshold.

2. Right to Establish and Maintain a Minority Political Party

2.1. Prohibitions in Domestic Law on Minority Political Parties

The state of political parties in the Turkish legal system is regulated by Articles 68 and 69 of the Constitution and the Law (No: 2820) on Political Parties. Below are the main articles that play a role in the establishment and the maintenance of minority parties. Article 68, paragraph four of the Constitution reads as follows,

“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

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1 Law on Political Parties; Adopted on 26 April 1983. Part four of the Law deals with “Prohibitions on Political Parties”. All domestic Turkish caselaw and legislation has been translated by the author.
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”.

Article 69, paragraph five of the Constitution regulates sanctions when a political
party acts against the above rule: “The permanent dissolution of a political party
shall be decided when it is established that the statute and programme of the politi-
cal party violate the provisions of the fourth paragraph of Article 68.”

The principles and rules set forth in Articles 68 and 69 of the Constitution have
been implemented by subsequently enacted legislation. As such, political parties in
Turkey are primarily regulated by a specific law on political parties, namely the Law
on Political Parties (LPP, Law No: 2820). Article 78 of the LPP reads:

“Political parties (a) shall not aim, strive or incite third parties to change: the repub-
lican form of the Turkish State; the . . . provisions concerning the absolute integrity
of the Turkish State’s territory, the absolute unity of its nation, its official language,
its flag or its national anthem; . . . the principle that sovereignty resides uncondition-
ally and unreservedly in the Turkish nation; . . . the provision that sovereign power
cannot be transferred to an individual, a group or a social class . . . jeopardise the
existence of the Turkish State and Republic, abolish fundamental rights and free-
doms, introduce discrimination on grounds of language, race, colour, religion or
membership of a religious sect, or establish, by any means, a system of government
based on any such notion or concept . . .”

Article 80 of the Law on Political Parties (LPP) under the title “Protection of the
Unity of the State” reads as follows: “Political Parties shall not aim to change the
principle of the unitary state on which the Turkish Republic is founded, nor carry on
activities in pursuit of such an aim”.

Article 81 of the LPP under the title “Prevention to Creation of Minority” reads:

“Political Parties shall not, a) assert that there exist within the territory of the Turkish
Republic any minorities based on differences relating to national or religious culture
or religious sect or race or language, b) aim to destroy national unity by proposing,
on the pretext of protecting, promoting or disseminating languages or cultures other
than Turkish to create minorities on the territory of the Turkish Republic or to engage
similar activities . . .”

Article 89 of the same Law under the title “The Protection of the State of the
Directorate for Religious Affairs” reads:

“Political parties shall not pursue any goals to the provisions of Article 136 of the
Constitution which stipulate the status, as an entity within the general administration,
of the Directorate for Religious Affairs that is to carry out duties assigned to it in its

2 After the European Court of Human Rights (ECrtHR) found the unjustified dissolution of several
political parties to be a violation of the Convention, the Turkish parliament amended the Constitution on
17 October 2001 and added a new paragraph to Article 69 of the Constitution which reads, “[]instead of
dissolving them permanently in accordance with the above-mentioned paragraphs, the Constitutional
Court may rule the concerned party to be deprived of State aid wholly or in part with respect to the inten-
sity of the actions brought before the court”.

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