

If we lose secularism, we lose everything

Tuesday 10 June 2008, by [Sylvia Tiryaki](#)

Yes, if the rule of law ceases to be ultimate, and if the credibility of the highest court is lost even for once, then we can irrefutably say that we have lost it all.

One of my young colleagues told me the other day, *“The secularism of Turkey is exactly that what distinguishes us from countries for instance in Middle East. If we lose it, we would lose everything.”* Actually, his was just the answer to my question on whether he really believed that allowing women wearing headscarves to attend universities would jeopardize the secular structure of the Turkish Republic.

It is clear from his response that my colleague thinks the liberation of the headscarves at the Turkish universities would endanger the principle of secularism on which the Turkish Republic is founded. It is also clear from my question that I have serious doubts that it would.

However, neither I, nor my colleague is a member of the Turkey’s Constitutional Court – the fact that casts our views purely to the domain of an academic discussion. In other words, our opinion on the substance of the constitutional changes on the emancipation of freedom of dress at the universities, approved by Parliament in February, doesn’t make much difference.

Constitutional Court

Still, if we agree that Turkey is, according to article 2 of its Constitution a democratic state governed by rule of law – where the Constitutional Court endorses all articles of the Constitution – an opinion of Turkey’s highest court on this matter shouldn’t make that difference either. Nevertheless, the Constitutional Court has maintained that it does, when it found in its recent verdict the substance of the constitutional amendments allowing women wearing headscarves to enter universities unconstitutional.

The court decided so despite the article 148 of the Constitution of the Republic of Turkey stipulating that constitutional amendments shall be examined and verified only with regard to their form, not substance. What’s more, it has done so without any public explanatory remarks that are required under the article 153 of the Constitution for any annulment decision of the Constitutional Court.

One doesn’t need to be a constitutional law expert to see that with one decision the top court breached two articles of the Constitution it is supposed to guard. It is needless to say that this unconstitutional move of the Court coupled with the highly dubious so-called “closure case” against the governmental party is posing comprehension difficulties to anyone who takes a rule of law doctrine seriously.

And indeed, some foreign observers feel so puzzled with this kind of “constitutionality” reading that they have even started asking – though joking partially – whether all that is real, whether Prime Minister Recep Tayip Erdoğan haven’t written this scenario to increase his popularity.

Pre-emptive action

Meanwhile, in Turkey few seem to be astonished by the evident political character of the Constitutional Court’s decision. Independently on whether they “agree” or not with the ruling, in general there is not much “surprise” around – as if there were anyway no expectations for the constitutional judges to act impartially.

This is perhaps worst of all - compromising one of the principles on which the Republic is grounded for taking a preemptive action against a still fictive threat to another. Those who are applauding the Constitutional Court today for taking a "bold" decision in that direction might realize one day that it is much better for any democracy to have a judicial system that is predictably reliable, upholding the rule of law and using the same yardstick against everyone while applying legal principles.

Because if the rule of law ceases to be ultimate, if its application becomes relaxed, open to subjective decision of judges and the credibility of the highest court is lost even for once, yes if we loose these, then, we can irrefutably say that we have lost it all.

Sources

Source : Monday, June 9, 2008 TDN