Unfree, Unfair, and Insecure

A Letter from Ankara

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26.04.2024 doi: 10.59704/7db7d86bbb09ee83

Within the wide-ranging spectrum of authoritarian regimes, Türkiye is predominantly identified as a "competitive authoritarian" or a "delegative authoritarian" state. This classification hinges on the preservation of certain democratic elements, the most critical being the conduct of periodic and multi-party elections. It is essential to recognize that elections encompass more than just the act of casting votes on election day. They represent an extensive process that includes the pre-election phase, during which the electorate's opinions are shaped, and the post-election phase, where votes are tallied and mandates are allocated. This process has long been characterized by international observers, including the European Union, as "free but not fair," a description that narrowly and insufficiently assesses the electoral dynamics within authoritarian contexts. The March 31 local elections in Türkiye, along with the general elections held on May 14, 2023, were compromised in terms of both freedom and fairness. Moreover, the assurance that the political power will respect the electorates' choice and the election outcomes cannot be presumed.

In the run-up to the March 31 elections, the opinion of electorates was shaped under heavily biased propaganda. The state-owned Turkish Radio and Television Association as well as pro-government media outlets have made one-sided coverage in favor of the ruling alliance of the Justice and Development Party (AKP) and Nationalist Movement Party (MHP). Furthermore, the electorate faced direct threats: during his campaign, President Erdoğan warned that access to state services would be restricted for voters in areas where the AKP candidates were defeated. Additionally, on the day of the election, in the eastern provinces of Şırnak and Ağrı, a significant number of soldiers and policemen, who had been brought in from other regions, casted their votes, thereby diluting the preferences of the local population. Consequently, detaching the existence of freedom from fairness, and assuming that the former can exist in the absence of the latter is challenging in this context.

Under such uneven conditions, the landmark victory of the main opposition, the Republican People's Party (CHP) in the March 31 local elections emerged as a wholly unexpected development – bestowing upon numerous individuals a sense of joy they had yearned for over the years. The CHP secured 37.7 percent of the total votes, marking the highest percentage in the country. Furthermore, it augmented its number of mayoralties from 263 in 2019 to 420. Even cities previously deemed strongholds of the AKP fell to the opposition.

In essence, the AKP, having governed uninterruptedly for 23 years, faced defeat in the local elections of March 31. Yet, does this truly signify a waning in public support for this party, and particularly the one-man rule established by President Erdoğan? Have Erdoğan's adherents ceased to support him unconditionally? I believe it would be misleading to draw conclusions only by looking at the election results. This is because the Islamist-nationalist ideology underpinning Erdoğanism remains powerful, even in provinces where the CHP was victorious in the local elections.

As the representative of Kemalist, secular, Western, and modernist ideals, the CHP positions itself diametrically opposed to the AKP/MHP alliance. However, in the provinces and districts that have shifted to the CHP in March 31, it cannot be definitively stated that a secular or Western perspective, counter to the ideology propelling the ruling alliance, has prevailed. This ambiguity arises because in numer-

ous provinces and districts – particularly those in the conservative heartlands of Anatolia – the CHP has nominated former members of the AKP and MHP as mayoral candidates who were sidelined by their parties. Hence, opting for candidates who embody Islamist-nationalist ideals was a tactical move that contributed to CHP's victory. Consequently, while the opposition's gains have indeed come at the expense of the AKP, they have simultaneously nourished Islamist-nationalist ideology.

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Asserting that the local elections have conclusively resolved matters would be an overstatement. Regrettably, the events following the March 2019 local elections have taught us that the ruling alliance does not honor the outcomes where it loses. On March 31, 2019, Ekrem İmamoğlu, a rising figure within the CHP, won the Istanbul metropolitan municipality mayoralty, securing 48.77 percent of the votes. The AKP and the MHP objected to the results, and the Supreme Electoral Council (YSK) annulled the Istanbul election on May 6. In the subsequent runoff election on June 23, İmamoğlu emerged victorious once more, this time with 54 percent of the votes, thereby officially becoming the Mayor of Istanbul. Nonetheless, the government's antagonism towards İmamoğlu did not cease but shifted to the judicial domain. İmamoğlu faced charges for allegedly insulting YSK members during a press conference on November 4, 2019. The prosecution sought not only a prison term but also a political ban, which, if imposed following a conviction, would preclude him from holding any public office and nullify his mayoral position. In December 2022, the court of first instance ruled in favor of imposing a political ban on İmamoğlu. The legal battle is ongoing, with the case currently under the scrutiny of the Court of Appeal.

Thus, the question arises: can we confidently believe that the AKP will honor the outcomes of the March 31 local elections? The Van district emerged as the initial testing ground for this inquiry. Abdullah Zeydan, the candidate of the pro-Kurdish Peoples' Equality and Democracy Party (DEM), gained 55 percent of the votes in Van's municipal elections. Yet, the regional electoral commission disqualified him due to a prior conviction, and subsequently awarded the mayoral position to AKP's candidate, who had received merely 27 percent of the votes. The commission's decision ignited violent demonstrations and clashes with the police. The overwhelming majority of opposition parties rallied behind Zeydan as well. Consequently, on April 3, the YSK reversed the regional election commission's verdict and affirmed Zeydan as Van's legitimate mayor. Therefore, the AKP attempted to usurp control of the Van district through deceit, and this attempt failed only due to the weight of significant public dissent and unrest. This event signals that the local election outcomes did not serve as a catalyst for Erdoğan to modify his stringent approach; on the contrary, the political power will persist in exploiting every available means to suppress the opposition.

İmamoğlu finds himself in a more precarious position than Zeydan. İmamoğlu decisively won the March 31 elections: he gained 51 percent of the votes, whereas his nearest competitor, the AKP's Murat Kurum, garnered 39 percent. Consequently, İmamoğlu was proclaimed the new mayor of Istanbul and received his official mayoral mandate. Nevertheless, his tenure as mayor remains at risk. While the appeal in the previously mentioned case is pending, a second legal action was initiated against İmamoğlu in January 2023, accusing him of "bid rigging." This latter case also seeks to impose a political ban on İmamoğlu. The forthcoming session of this pivotal lawsuit is scheduled for April 25.

In conclusion, the mere occurrence of periodic multi-party elections is of little consequence in authoritarian regimes such as Türkiye. On the one hand, Erdoğan extols the virtues of elections and professes adherence to the popular will, yet on the other, he readily uses any means at his disposal – be it legal, judicial, bureaucratic, or even military – to reverse electoral results that are unfavourable to his party. Therefore, the only strategy for the opposition to safeguard the significant achievements of March 31, particularly the mayoralty of Istanbul, hinges on preparing for widespread resistance against the ruling establishment.

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The Week on Verfassungsblog

Individuals have the right to be protected from the adverse effects of climate change. More and more courts around the world are interpreting constitutions and human rights treaties in this or similar ways. Recently, the **Supreme Court of India** took that stance. This is not only major news in India, but a development of global relevance. For the first time, people in the world's most populous country can now enforce more climate protection through constitutional climate litigation. PARUL KUMAR and ABHAYRAJ NAIK explain the ruling and its consequences.

Not only in India, but also in Europe, a court has recently issued a spectacular climate ruling (on which we have an entire blog symposium). However, the **European Court of Human Rights** showed more caution regarding who can sue for effective climate protection before the ECtHR. JAKOB HOHNERLEIN assesses the court's fear of actio popularis and is not convinced by the court's restrictive approach.

We already reported on the first judgement in **Italy** on climate protection, *Giudizio Universale*, a few weeks ago. Now, shortly after the ECtHR handed down its three ground-breaking judgements in *KlimaSeniorinnen v. Switzerland, Duarte Agostinho v. Portugal and Others*, and *Carême v. France*, MORITZ VINKEN and PAOLO MAZZOTTI provide a new critical assessment of the *Giudizio Universale* decision.

What binds us together? Only the "passport-power"? After almost 70 years since *Nottebohn*, a genuine connection still stirs the water. Continuing Weiler's debate on the **'citizenships for sale'**, LORIN-JOHANNES WAGNER offers yet another outlook. He explains that in *Commission v. Malta* the CJEU may well reinvigorate a European debate about the genuine links that bind us. The answer, to be sure, will be momentous, and he, for once, would argue it is high time to make the point that nationality is not just anything a State makes of it.

Deportations without procedural guarantees have become common practice at the EU's internal borders. On Wednesday 24 April, the European Parliament voted on a **reform of the Schengen Borders Code**. FALK MATTHIES took a look at the proposed regulation and expressed concerns about its practical applicability and compliance with standards for the rights of the child.

The Polish reckoning with the illiberal turn of the past years seemingly does not apply to the unlawful practice of **pushbacks** on the Poland-Belarus border. The unlawful practices, best exemplified by pushbacks, have come to be accepted in the European mainstream. MACIEJ GRZEŚKOWIAK shows how the humanitarian crisis on the Poland-Belarus border and its handling by the new government, together with its rejection of the New Pact on Migration and Asylum, vividly illustrates this point.

In the context of profound (geo-)political changes, and following the Conference on the Future of Europe, the **European Parliament** (EP) adopted proposals for a Treaty reform for the area of defence. KARSTEN MEIJER and ARJEN KLEIN analyse the proposed formation of the European Defence Union (EDU) and the introduction of qualified majority voting (QMV) while concluding that the new framework would likely create contradictory outcomes and undesirably challenge the current constitutional balance.

For months, the Finnish legal scholar PÄIVI LEINO-SANDBERG has been searching for information on how **NextGeneration** EU funds are disbursed and managed. After a long period of stonewalling by the Commission, now comes the spectacular turnaround. But the documents made available show one thing above all: there is no effective control over what the money is used for and how.

Earlier this month, the **Helsinki Court of Appeal** held that rallying under a Nazi swastika flag constituted an offense of incitement to hatred. KIMMO NUOTIO welcomes the judgment as an important step forward in Finland's regulatory approach to the problem of hate speech.

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YANNIK BREUER and JANNIK KLEIN accompanied the eagerly awaited hearing of the Federal Constitutional Court on the **electoral law reform** of the *Ampel-Koalition* in Karlsruhe this week. The report on day 2 of the hearing will follow on the weekend.

The (very German) debate on the **criminality of sit-ins that block traffic** continues: MANUEL CORDES and JAKOB HOHNERLEIN reject the long-standing German jurisprudence that criminalises sit-ins as coercion. They argue that the courts' definition of the word ‚violence' is no longer comprehensible in everyday language and violates the principle of legal certainty enshrined in Article 103(2) of the Basic Law, a norm that also binds the courts when interpreting criminal law provisions.

The Berlin Regional Court has convicted a doctor of indirect manslaughter for supplying a patient with medication to help her commit **suicide**. ANNIKA DIEßNER criticizes the court's decision to deny freedom of responsibility, even though an expert had not done so. She notes that the standards set by the Federal Constitutional Court's jurisprudence for assisted suicide cases do not provide reliable guidelines for either practitioners or courts.

A now well-known but still unsolved problem of press freedom are so-called **SLAPPs**. These are hopeless and abusive lawsuits against journalists and civil society actors that have no other purpose than to silence them through escalating processes. The ECJ now has the opportunity – with reference to fundamental principles of EU law – to draw outer limits. And that in a case involving doping and the Spanish soccer club Real Madrid, of all things. PAULINA MILEWSKA and ZUZANNA NOWICKA analyze the matter.

300 years of **Immanuel Kant** – this has been widely celebrated. But does the anniversary also have significance for the German constitution? MATHIAS HONG explains the relationship between Kant's philosophy and the German Grundgesetz.

Finally, there have been exciting new additions to our **two ongoing blog symposia**. JANNIKA JAHN adds an international law perspective to the symposium on the ECtHR climate decisions. S IRUDAYA RAJAN and ANAND SREEKUMAR, as well as VRINDA NARAIN, contribute two more texts to our symposium "Indian Constitutionalism in the Last Decade."

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That's all for this week. Take care and all the best,
the Verfassungsblog Editorial Team

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SUGGESTED CITATION

Kaynar, Ayşegül Kars: Unfree, Unfair, and Insecure: A Letter from Ankara, Verfassungsblog, 26.04.2024, doi: 10.59704/7db7d86bbb09ee83.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20240427-185211-0.