The European Court of Human Rights: Promoter or Predator of Democratic Transitions?

A workshop organized by:

The Center for Global Public Law, Koç University

and

PluriCourts, University of Oslo

September 19-20 2015

RCAC Building, Koç University, İstiklal Caddesi 181, Beyoğlu, Istanbul

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The European Court of Human Rights: Promoter or Predator of Democratic Transitions?

Since its creation, the mandate of the European Court of Human Rights has always been to promote and safeguard “effective political democracy” in the member states of the Council of Europe. These objectives have assumed a variety of forms according to the different phases of democratic development within states party to the Convention.

This workshop’s aim is to define and analyze varieties of “democratic models” and “democratic transitions” on the basis of the jurisprudence of the Strasbourg Court. There are different typologies or phases of democratic transitions in which the Court has been involved: from post-World War II transitions, to authoritarian transitions in late 70s, to more recent cases of democratic shifts. Others transitions are “within democracies” or “uncompleted transitions” or “reverse” or “stalled” transitions.

Our working hypothesis is that different instances of democratic or reverse transitions offer us lessons about alternative and possibly competing ways in which the Court adopts a proportionality standard and assess the reasonability of deliberations in national parliaments and constitutional courts.

Relevant questions about how the Court promotes or hinders higher democratic standards include:

- How does the ECtHR’s jurisprudential principles of effectiveness and margin of appreciation interact with transitional contexts?
- What balance does the ECtHR strike between acting as a corrective device of last resort or as entrenching basic structural changes?
- Does the ECtHR employ general mechanisms of transitional justice improvements in different countries or does the Court use context-specific understandings?
- What impact does ECtHR case-law have on transitional processes and what are the appropriate methodologies to assess such impact?

Papers presented at the workshop will include; theory-oriented papers concerning the legal-philosophical content of the notion of ‘democratic transitions’ and the apparent paradox of democracy enhancement by means of rights restrictions adopted in “transitional contexts” by the Court; comparative case-law papers focused on how transitional contexts appear as judicial forms; and country specific papers that discuss the effectiveness of the Court’s interaction with transitional contexts.
Workshop Programme:

**September 19**

9:00-9:15 Welcome by Başak Çalı, Center for Global Public Law, Koç University Law School and Claudio Corradetti, PluriCourts, University of Oslo

9:15-10:15 "Does The Margin of Appreciation Doctrine Benefit or Hinder the ECtHR's Contribution to Democratic Transitions?" Andreas Føllesdal, PluriCourts, University of Oslo


11:15-11:30 Coffee Break

11:30-12:30 "Apparent Paradoxes in the ‘Militant Turn’ of the European Court of Human Rights: Transitional Rationale and the Refah Partisi Case" Claudio Corradetti, PluriCourts, University of Oslo

12:30-14:00 Lunch

14:00-15:00 "Oblique Promotion of Transitions? The Role of the ECtHR’s Case-Law on Freedom of Expression and Information" Antoine Buyse, Netherlands Institute of Human Rights

15:00-16:00 "Strasbourg Remedies and Transitions: Promoter or Predator?" Başak Çalı, Center for Global Public Law, Koç University

16:00-16:15 Coffee Break

16:15-17:15 "The Imaginary Right to Truth and its Many Beneficial Uses" James A Sweeney, Lancaster University

17:15-18:15 "Developing the Right to the Truth under International Law: What Strasbourg can Bring to the Conversation" Alice Panepinto, Warwick University

**September 20**

9:00-10:00 "Democratic Transition through Democratic Debate: Turkey before the European Court of Human Rights" Alain Zysset, Goethe-University, Frankfurt-am-Main

10:00-11:00 "The ECtHR’s dual role in democratic transition: The case of Turkey" Dilek Kurban, Hertie School of Governance, Berlin

11:00-11:15 Coffee Break

11:15-12:00 Wrap-up Discussion, Chair - Başak Çalı