Political Trials and the Second Jurisdiction of the State: Normalcy of the Exception

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Political Character of Trials

Political trials are one of the most controversial issues in Turkish politics. From 2007 onwards, a series of political trials have started to be prosecuted. All of them are heard in the Specially Authorized Courts on the basis of Anti-Terror Law. In all, the scope of investigation is broad – trials spread countrywide and hundreds of individuals are charged. Their investigation and prosecution processes are marked with violations of rule of law, from long pre-trial detention periods, to police's unlawful role in the preparation of indictments and production of fictitious evidence. To be sure, while each case is unique, there are important similarities. Each case is significant for the sake of the questions they raise for the relation between politics and law on the one hand, and the constitutional state and political power on the other.

Political trials are commonly held to belong to the domain of law. They take part in the courts that are supposedly independent from politics and the political power. Therefore, they seem to concern only the judicial power of the state. However, this view may be misleading. There are many reasons why political trials are also political issues. To illustrate this point, the best known and most debated political trials, Ergenekon case and KCK Case are chosen as examples. When we look at closely, it will be seen that in both of these cases, it is the political opposition to the governing Justice and Development Party (AKP) who is being charged in the courts. This opposition is principally from the Turkish military in Ergenekon case, and Kurdish politicians and activists in the KCK Case. Secondly, it is principally political issues which are handled in the courtrooms by jurists. This issue is civil-military relations, Kurdish minority problem, and constitutional right to protest and demonstration respectively.

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At the heart of Ergenekon case lies the allegation about planning a military coup against the AKP government. This allegation maintains that the Ergenekon investigation centers on the Turkish military. Therefore, in the initial stages of the investigation, it is not ordinary citizens, but mostly the members of the military which feared judgement. It is commonly known that the military reacted against the AKP government. The confrontation between the AKP and the military was indeed contentious up until 2008. For instance, in 2007 at Turkish Embassy in Washington, General Yaşar Büyükanıt warned that "the Republic has not faced greater dangers since 1919. Military could not allow the country to disintegrate" (Baran, 2010:60). The danger that he pointed to was the AKP power. Nevertheless, the tension between the military and the AKP accelerated during presidential elections. In April 2007, Foreign Minister Abdullah Gül was nominated by the AKP as the presidential candidate. It was not only that candidate Gül was an ardent Islamist, but also his wife dons a headscarf. In the first round of presidential elections on April 27 Gül took 357 of the votes, while 367 were needed. This situation left the election of the president to the second round. On the very same day the Turkish General Staff published a memorandum on its website, which was called as "e-memorandum". The e-memorandum stated that the presidency of Gül would disturb secularism. The military implicitly warned that it would intervene if secularism was put at risk by the election of Gül (Höjelid, 2010:467). On the first of May, the Constitutional Court annulled parliament's vote for Gül. On May 6, Gül withdrew his candidacy.[1]

The military's power in the National Security Council (MGK) and the fact that from time to time the military used this power to the detriment of civilian governments (as in the example of February 28), make the military the AKP's most troublesome and strongest adversary. In this regard, the Ergenekon case is a part of the AKP's struggle with its adversary – the AKP tries to gain political leverage over the military though Ergenekon case. Therefore, what is at stake in the Ergenekon case is actually a political issue.

In the KCK (Koma Civaken Kurdistan) case, however, it is the executives and members of the (dissolved) Democratic Society Party (DTP) and the Peace and Democracy Party (BDP) who are principally and mostly interrogated, taken into custody, arrested, and charged. As of the beginning of the KCK's investigation in April 2010, 1,483 BDP members in total had been arrested.[8] Therefore, the target

1 Seeing that the parliament is not able to elect Gül as President, Erdoğan called for early general elections. In July 2007, the AKP won a landslide victory with 46.7 percent of the votes and obtained 441 of the 550 seats in the parliament. Finally, in August 2007, Abdullah Gül was elected as the President in the first round after gaining the support of Nationalist Action Party and some Kurdish members.

of the KCK case is explicitly Kurdish politicians. Some of the defendants are even elected representatives of the people (mayors and an MP of the BDP). However, they are now being incriminated by membership to an illegal organization.

The indictment of the KCK main trial at Diyarbakır incriminated the BDP members and the other defendants by "violating the unity and indivisible integrity of the state with its territory", "being a member of armed terrorist organization", "heading an armed terrorist organization", and "aiding and abetting a terrorist organization". According to the indictment, Kurdish armed movement Kurdistan Workers' Party (PKK) reorganized and renamed itself as the KCK. Therefore, the KCK is allegedly the same organization as the PKK. The only difference is that the KCK is the main umbrella structure, mostly organized in the cities. Hence, it is generally referred as the "urban establishment of the PKK". Consequently, the indictment names the terror organization as the "PKK/KCK".

The BDP has not managed to pass the 10% threshold in the general elections and enter the parliament. As a result, it opts backing independent candidates to whom the election threshold rule do not apply. Hence, in general elections the BDP is far from competing and beating the AKP. However, the AKP and the BDP have competed against one another in the southeastern cities, where significant numbers of Kurds live. In the last local elections held in 2009, the BDP increased the number of municipalities under its control to 99 (Satana, 2012: 176). This made the BDP a significant political rival of the AKP in southeast Turkey. Within this competitive political environment, the AKP has used a discourse of Islamic brotherhood and religious commonality as a way of increasing its influence over the Kurdish population in southeastern cities. However, repressive measures have also been used. The KCK investigations and pre-trial arrests is one of these repressive measures used against Kurdish politicians in order to get them out of AKP's way or bring them in line with AKP's policy preferences, one of which is Kurdish Opening.

All in all, in these two political trials it is the AKP's political opponents who are being charged. The AKP intimidates and represses political opposition by charging them in the courts. Hence, it is not wrong to say that judiciary and courts are used as political instruments that the AKP utilizes to criminalize opponents and control society. This is in line with what Tom Ginsburg says about the social role of the courts. According to Ginsburg (2010:177), courts in general function as an effective instrument of social control. As a part of this social control, they may specifically be used to intimidate, harass or even eliminate opponents, which make them an apparatus of repression. They can demobilize popular oppositional movements efficiently, reduce the need to exercise force, and garner legitimacy for the regime, showing that it "plays fair" in dealing with opponents, and can create positive image for its regime and negative ones for the opposition.

The latest example that illustrates this role of judiciary and the courts is the Gülen Cemaat case. Cemaat has been the closest ally of AKP governments within state establishment for years. In fact, Ergenekon and KCK cases were carried out by Cemaat members situated in police force and judiciary. However, since 2012 this alliance has started to break apart. The enmity which ended up in the courts took place with the corruption probe against the AKP. On December 17, 2013 a criminal investigation uncovered the bribery and corruption scandal in which four active AKP ministers and their sons were involved. Recordings of phone-tapped conversations that Prime Minister Recep Tayyip Erdoğan instructed his son to dispose of large amounts of hidden funds from their private home were leaked to internet as well. The government tried to cover up the scandal. The prosecutors Celal Kara and Muammar Akkaş were removed from the case and four prosecutors, including Kara and Akkaş and one judge involved in the investigation, were dismissed from their professions later on. Tens of thousands of policemen have also been dismissed.

The AKP accused the Cemaat of conducting the investigation. Prime Minister Erdoğan charged that Gülen Cemaat formed an illegal "parallel state structure" and had established a terror organization with the objective of ousting AKP from power. In the following days, the courts acted in line with Erdoğan's words. On the anniversary of the investigation, on December 14, 2014, two flag-bearers of Gülen Cemaat were taken into custody by the police. Chief Editor of *Zaman* Newspaper Ekrem Dumanlı, and *Samanyolu* Media Group Head Hidayet Karaca were accused of being members of the terror organization. While Dumanlı was released, Karaca was arrested.

The Cemaat case is another example to the political function of trials. In this case, an old ally was repressed by being charged in the courts. Cemaat was criminalized and demonized for being a "terrorist organization" responsible for the wrongdoings of the state, although it is known to have cooperated with the AKP for many years. This is yet another example of how the AKP opts to punish its opponents through judicial means.

Ozansü (2012) suggests that in political trials, political power and political opposition come face to face. These two poles continue to struggle in court houses. Therefore in political trials, court rooms are actually political arenas. This view especially holds true for these three cases. The dialogue and negotiations between the AKP and the military, and the Kurdish movement and the Gülen Cemaat did not conclude with the start of the trial processes. On the contrary, the courts are used by the AKP to increase bargaining power in these negotiations. Therefore, the battle between political power and opposition in the parliament, administrative offices, and in the civil society is simultaneously joined by the battle in the courts. In this regard, the Ergenekon case should be considered as a part of the broad

relation between the AKP, the MGK and the Turkish armed forces. While the military is perceived as a threat to the AKP's political power and was charged in the Ergenekon case, the Ergenekon case itself intervenes into the relation between the AKP and the military and transforms the perception of threat. Similarly, the KCK case is a part of the AKP's Kurdish policy. It is a determinant taken into consideration in the dialogue between the AKP, the PKK, and the BDP, and it is a factor in the current Kurdish peace process. The Cemaat case on the other hand is a part of a reformulation and transformation of a sustained alliance; it is a power struggle between two partners.

These points make political trials no longer solely a legal matter. Indeed, the political character of these trials is as ostensible as their legal nature. Therefore, it is better to resituate them within the intersection set of law and politics. Yet in this case, they shall be re-interpreted and re-conceptualized in terms of the relationship between political power and rule of law or constitutional dimension of the state.

Justice of Specially Authorized Courts

In political trials, criminalization of political opposition takes place in the Specially Authorized Courts (ÖYMs) on the basis of Anti-Terror Law. Up until their abolishment in March 2014, the ÖYMs functioned as high criminal courts. They were introduced with the new Turkish Code of Criminal Procedure (CMK) No 5271, prepared and proposed by the AKP government in June 2004. Articles 250-252 of the new CMK established high criminal courts, which have special authorities. According to Article 250 of the CMK, trials launched against crimes defined in Articles 302-339 of the Turkish Criminal Code (TCK) No 5237 will not be conducted in regular courts, but will be assigned to assize courts whose judicial district is to be determined by the Supreme Council of Judges and Prosecutors (HSYK) at the proposal of the Ministry of Justice. The majority of the crimes, defined in Article 302-339 of the TCK and assigned to the ÖYMs, fall into the scope of Anti-Terror Law No 3713. Accordingly, Articles 302, 307, 309, 311-315, 320 and the first paragraph of Article 310 of the TCK are defined as terror crimes in Article 3 of Anti-Terror Law. All of the terrorist crimes are regulated by Article 250 of the CMK, and are overseen by the ÖYMs.

The criminal procedure for regular judgments is defined by the CMK. However, the ÖYMs stay out of it in many respects. The ÖYMs have exceptional judgment rules. Prosecutors and defendants of the ÖYMs were given many exceptional rights. Only some of them will be mentioned here for the sake of illustration and explication.

First, Article 91 of the CMK states that the timeframe to keep a person in custody cannot exceed 24 hours starting from the moment of apprehension. However, it is 48 hours for the ÖYMs (Article 251 of the CMK). Secondly, the CMK Article 102 limits the term of arrest to two years in tasks covered by high criminal courts. If extended, such extension cannot exceed three years in total. However, the period of arrest can be twice as long concerning the crimes overseen by the ÖYMs (Article 252 of the CMK). Third, Article 154 of the CMK allows suspects or the defendant to meet with the defense counsel any time without any requirement in surroundings where the conversation cannot be overheard by others. The exchange of letters between them is not subject to inspection. These rights are also eliminated in the ÖYMs. Article 10 of Anti-Terror Law states that if a lawyer's mediation is suspected to facilitate communication between a defendant and a proscribed organization, the judge may decide for the presence of an official in the meetings. Also, the exchange of letters between them can be inspected, and the judge may restrict this exchange partially or totally.

As seen, the ÖYMs stay out of the CMK. Articles 250-252 of the CMK bring exceptions to regular criminal judgment procedure. In this way, the existence of specially authorized courts, discriminatory rights and judgment procedures divide the judicial system of Turkey into two. It creates a second criminal jurisdiction, to which political trials belonged. On the one hand, there is legal justice, courts of general jurisdiction that enforce general judgment procedures, and constitutional rights. On the other hand, there are the ÖYMs that operate with exceptional judgment procedures. Also, the ÖYMs constitute exceptions to the CMK to the detriment of defendants. It strengthens prosecutors and it deprives suspects and defendants of some of their regular rights, or rights that they would have in other courts. Therefore, the most obtrusive and troublesome feature of the judgment of the ÖYMs is the restriction of defense – the judgment of the ÖYMs is unjust as powers of prosecution and the defense are unequal (Ertekin, 2011).

Similarly, society is divided into two on the basis of its relationship with the constitutional state. A part of it enjoys basic constitutional rights and freedoms, subject to regular jurisdiction of the state and therefore is called "citizens". The other part, however, are called as "terrorists", subject to restriction of rights, and charged in special courts on the basis of exceptional judgment procedures (Ertekin, 2011a). These two systems of rights and judgment systems (and statuses of individuals) continue to live side by side within the constitutional state in Turkey.

The Character of Specially Authorized Courts: Exception and Extraordinary?

In the literature the Anti-Terror Law and the ÖYMs that together constitute a second criminal jurisdiction are qualified as "exceptions" and called "extraordinary". Most of the time they are associated with the theory of *Enemy Criminal Law* developed by Günter Jakobs. According to Jakobs, the state gives different rights to those defined as a "citizen" and those defined as an "enemy". Correspondingly, they are subject to the *Citizen Criminal Law* and the *Enemy Criminal Law*. The Citizen Criminal Law is preventive; its objective is to prevent crimes before they happen (Rosenau, 2008:393). The requirement for one's assessment as "citizen" is his/her obedience of the legal system and acceptance of validity of the normative order. Under these conditions, interaction and dialogue between the individual and the state can be possible via penal sanction. Within the confines of this interaction and dialogue, a criminal is perceived as a person. However, an "enemy" is not covered by a preventive law because the state sees that an enemy could not meet the minimum basic cognitive requirement to be assessed as citizen. An enemy is regarded to turn his/her back to legal order. Hence, an enemy actively opposes the legal order and is a rival of it (Jakobs, 2008:497). With this reasoning, an enemy's interaction and dialogue with the state has ceased and therefore the enemy cannot be an object of usual, general criminal law.

The enemy loses his/her civil rights. In other words, those individuals who are denied of the legal order of the state are also denied their basic rights. In this context, the enemy is not treated as a person (Jakobs, 2008a:66). The people who are removed from personality are thereby "unpersons". For this reason, the state does not give them the usual rights of accused and does not respect their private lives. Presumption of innocence does not apply to the enemy; instead, they are subject to "presumption of criminality". The state will benefit from any doubt about the innocence of the accused. The enemy is a source of threat in the eyes of the state and the state fights against the enemy (Kanar, 2011:72). Therefore, the objective of the Enemy Criminal Law is the elimination of this threat with the least damage and with the most appropriate method (Ökçesiz, 2008: 554). Hence, punishment of the enemy is not necessarily directed to his/her concrete or manifest action; rather, it is oriented to prevent future actions.

As Sinn (2008:613) underlines, there are four components of the Enemy Criminal Law. Prevention of future crimes is paramount and accounts for the first component. For instance, within the Enemy Criminal Law, intention to commit a crime or planning a crime is itself punished even if the crime does not take place. Second, the punishment is disproportionate to the crime, and is not reduced. The

relation between intention to commit murder and committing murder may actually be weak; however, intention is punished equivalently to committing murder. Third, the right to a defense counsel is restricted or denied to the enemy defendant. Lastly, the Enemy Criminal Law is no longer a code for criminal actions; rather, it is a code for warfare. As mentioned above, the state declares those who have not showed their respect to legal order as an enemy. Afterwards, it mounts attacks against them to protect itself. Meanwhile, as Hayrettin Ökçesiz (2008a:561) states, the incident that led to the creation of such a code of warfare is organized crime and especially terrorist crimes. That's why Enemy Criminal Law is used against "terrorists" in particular.

Taken together, we can draw parallels between Jakobs' theory of Enemy Criminal Law and special judgment rights and the procedures of the ÖYMs in Turkey. Perhaps the first striking similarity is the name of the law for the prevention of terrorist crimes. The literal name of Anti-Terror Law No 3713 in Turkish is "Warfare against Terror", which reveals the state's perspective of *fighting against* an enemy. Secondly, the acts of inciting, provocation, and attempting to commit terror crimes covered by the Anti-Terror Law are considered as independent crimes (Article 311 and 312 of the TCK). Similarly, those who are not members of a terrorist organization, but participate in a meeting with organization members or commit a crime in the name of the organization are disproportionately subjected to the same punishment as members of organization (Article 2 and 7 of the Anti-Terror Law). Moreover, as stated above, the rights of the defendants charged in the scope of the Anti- Terror Law in the ÖYMs are restrained; the meeting of defendants with defense counsel is restricted. In this context, Ercan Kanar (2011: 67) claims that the Anti-Terror Law and the ÖYMs fall into the category of Enemy Criminal Law. According to him, the ÖYMs reflect the Enemy Criminal Law that Jakobs developed.

Importantly, the Enemy Criminal Law has an extraordinary character. Jakobs (2008: 490) says that the Enemy Criminal Law is used in exceptional circumstances. Accordingly, the Enemy Criminal Law should not be regarded as an arbitrary attitude or a bunch of rules oriented to unlimited annihilation of the enemy. On the contrary, the Enemy Criminal Law is used in a constitutional state ruled by the rule of law intentionally and with utmost care. It is an *ultima ratio* resorted to only exceptionally. Therefore, it is an exceptional law; its exercise does not constitute continuity. Ökçesiz (2008a:565) associates the Enemy Criminal Law with a state of emergency, one of those exceptional situations. He analyzes the Enemy Criminal Law within the context of a state of emergency and in this way, frequently refers to Article 15 and Article 120 of the 1982 Constitution that regulate state of emergency. Finally, Aponte (2008:577) also reminds us that in practice the Enemy Criminal Law is enforced as state of emergency criminal law.

Hence, the ÖYMs are not only exceptional but also extraordinary courts. Such exceptional and extraordinary courts do not routinely arise in "normal" or "usual" periods of parliamentary democracy and constitutional state. Indeed, exceptional courts generally emerge in times of social unrest, when the coercion of political power is felt in society more deeply. In addition, they are used only temporarily. *Independence Courts*, *Courts Martial*, and *Yassıada Courts* are examples of extraordinary courts that appeared in extraordinary times in the history of Turkey (Aydın, 2012: 345). However, the same cannot be said for the ÖYMs. Firstly, the AKP did not declare a state of emergency or consult emergency regulations in any way. Hence, it exercises political justice and uses extraordinary means without declaring a state of emergency. Secondly, the ÖYMs are embedded in the CMK or Anti-Terror Law. In other words, extraordinary criminal judgment regime is integrated into general criminal judgment procedures. As such, the operation of general or "usual" criminal law automatically operates extraordinary, exceptional criminal law. In such a circumstance, extraordinary law is no longer an occasional occurrence. On the contrary, it is made regular. Society is regularly under extraordinary judgment regime.

How shall one interpret the continuous presence of extraordinary law and courts in ordinary times in Turkey? Does it create an extraordinary state? Put another way: is the constitutional state in Turkey exceptional, either partially or implicitly? Aponte (2008:575) gives an affirmative response to the last question. According to him, the presence of a state of exception does not necessarily require the legal promulgation of state of emergency regulations or martial law. He claims that the presence of exceptional rules like the ones concerning terrorism also creates a state of exception.

However, adopting Aponte's views for Turkey is problematic. If the presence of extraordinary law and courts is deemed sufficient to create a state of exception without promulgation of state of exception legally, it means that a constitutional state in Turkey has been under state of exception for 30 years. This is because extraordinary courts and laws have existed for 30 years. Article 143 of the 1982 Constitution established the State Security Courts (DGM). These courts were progenitors of the ÖYMs, as they were also exceptional courts. The DGMs were abolished in 2004; however, the ÖYMs were established in place of them on the same day with almost the same duties and rights. Hence, if Aponte is right, Turkey has never regained normalcy after 1980; it has existed *as a state of exception*. Hence, the claim of exceptionality sounds sententious in the theory; however, it turns out to be barren in practice.

Actually, the presence of extraordinary laws, courts and judgment procedures does not make the period we live in an extraordinary state as a whole. In order

to determine what a "state" is we have to look at the situation and functioning of powers of a constitutional state. What we see today is that the constitutional state in Turkey continues its normal functioning as a parliamentary democracy from the point of legislative and executive powers. Constitutional rights remain unchanged; executive organs work seamlessly in a complete and regular manner; the legislative organ works seamlessly in a complete and regular manner, as does the judiciary despite operating the ÖYMs. Ergo, Turkey enjoys a normal, ordinary state in spite of the presence of extraordinary courts, laws, rights. Haluk İnanıcı (2011: 52) evaluates this duality and says that the ÖYMs exist as a "normal exception" or "an exception that is not an exception". İnanıcı's comment reveals a contradiction. The ÖYMs are called "an exception" and as "not an exception". However, they cannot be both simultaneously. In this respect, although İnanıcı underlines that exceptional courts operate in a normal-usual period, his comment is insufficient in shedding light to the situation of the ÖYMs.

Ordinariness of Political Justice

The ÖYMs are exceptional courts. Yet, they do not constitute an exceptional or an extraordinary state for constitutional state and liberal parliamentary democracy. Extraordinary regulations of the TCK 250-252 and the Anti-Terror Law Article 10 are ordinary parts of the regular law and constitutional state in Turkey. Therefore, something that is defined as "usual or normal exception" just like in the case of İnanıcı's comments, loses its exceptional character. Exception melts in the usual. In such a situation, longevity of exceptional courts and judgment procedures cannot be named "exceptional". Özkan Agtaş (2012:16) also remarks that the ÖYMs and extraordinary rights are step by step becoming commonplace and that general/usual laws and courts are becoming secondary. Therefore, gradually, general law or the rule of law is subrogated to exceptional, extraordinary rights and procedures. Within this context, the second jurisdiction of the state loses its exceptional and extraordinary character – it becomes usual and normal.

Consequently, when the AKP charged its opponents in the ÖYMs from 2007 to 2014, it used a usual and normal political means that the rule of law and constitutional state in Turkey provided for political power. Hence, any criticism of AKP's political means and attitudes is likely directed to liberal parliamentary democracy and the constitutional state in the first place. Suggesting otherwise, and calling the ÖYMs and extraordinary rights exceptions, takes constitutional state and parliamentary democracy out of the gazw of criticism and idealizes them.

Seeing the picture of normalcy of special courts (including both ÖYMs and the DGMs), there appears the need to reconceptualise the second jurisdiction of the state and and rethink political trials. In this regard, the concept of "political justice" that is used by Carl Schmitt (1888-1985) may be helpful. Schmitt is best known for his political theory and his thoughts on "politics", "sovereignty" and "friend and enemy distinction". Moreover, he is known as the theorist of borderline cases, like the state of exception and extraordinary situations. However, he is an ardent critic of parliamentary democratic and constitutional regime as well. He thinks that parliamentary democracy and constitutionality claim to have a liberal content and substance. However, they are merely organizational forms and they lack and fail to protect any specific content, he contends. In his words, democracy within a constitutional state can be liberal, socialist, conservative; militarist or pacifist, absolutist or liberal, centralized or decentralized, progressive or reactionary without ceasing to be a democracy (Schmitt 1985:25). Hence, for him, democratic politics in the parliament is an empty form, it is only procedural. In such a context, the continuous presence of exceptional courts and extraordinary rights of political opposition does not surprise him. On the contrary, *political justice* is such a concept which shows that these institutions are regular apparatuses of constitutional states and parliamentary democracies used to supress political opposition.

In the discussions of courts and trials, Schmitt rejects the independence of judiciary from political power. On the contrary, through controlling or influencing the appointment and promotion of prosecutors and judges by the ruling party, political power can control judiciary, and also the enforcement of law in the court rooms by jurists. Therefore Schmitt claims that we can identify a *political component* in the enforcement of laws to any and every concrete case in the courts. However this view, which binds judiciary to ruling party, has the defect of complete subjugation of law and legality to political power. When the political component of judicial decisions dissolves within legal order, all judges, all courts, and all cases are affected by that. Under such a circumstance, all trials become *political* – from traffic accidents to tax fraud and theft, and all trials must be reckoned as political trials. However, still to call a traffic accident a political trial sounds bizarre and actually, would rob that phrase of its meaning. Hence, to an extent, all trials are political; yet, some are *more* political than the others.

Schmitt states that among all legal disputes that must be settled within the general jurisdiction of the state, political character of some of the disputed questions or the political interest in the object of dispute emerges strongly. Due to political distinctiveness of such cases, they are handled differently. Accordingly, because of their political character, a special procedure or order is provided for these genuine legal disputes. Schmitt calls this process the actual problem of *political*

justice (2008:176-177). Here in political justice, the issue is basically a legal dispute. However, it is deemed politically important by the political power. Because of its political importance, a special procedure or order is provided for these legal disputes. Actually, these disputes must be decided by the courts of general jurisdiction in accordance with the generality principle of law. However, they are discriminated, taken out of the general jurisdiction, and judged within a specialized jurisdiction. Therefore, for some cases, a special type of justice – *political justice* – is provided *vis-à vis* legal justice.

In political justice, political interests directly intervene into legal disputes. Yet, they intervene by changing the jurisdiction of these politically important cases. Direct intervention of political interests comes simultaneously with the provision of special or exceptional rules and procedures of judgment. Therefore, a special justice system is activated only with this intervention and decision of political power.

There are couple of important issues to bear in mind. First, the concept of political justice is another concept that refers to the second jurisdiction of the state. However, in contrast to the *Enemy Criminal Law* conceptualization, it makes no reference or claim to the exceptional or extraordinary character of special courts or of this second jurisdiction. Rather, these apparatuses operate when the political power needs them to. This means that the constitutional state and parliamentary democracy inherits *exceptional* courts and *extraordinary* justice system. This makes the second jurisdiction of the state potentially at the heart of constitutional system. This potential blossoms or it is activated when the need emerges. Therefore, the second jurisdiction of state may even be called a rule, rather than exception. In addition, this concept uncloaks the political function of this second criminal jurisdiction, and its relation with the political power. Therefore, the paper defends that Schmitt's formulation of political justice better explains political trials and the ÖYMs than the discussion of their exceptional and extraordinary legal status.

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