EUROPEAN COURT OF HUMAN RIGHTS

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GRAND CHAMBER JUDGMENT IN THE CASE OF REFAH PARTISI (THE WELFARE PARTY) AND OTHERS v. TURKEY

The European Court of Human Rights has delivered at a public hearing today a judgment[1] in the case of ***Refah Partisi (The Welfare Party) and others v. Turkey*** (application nos. 41340/98, 41342/98, 41343/98, and 41344/98). The Court held unanimously that:

- there had been **no violation of Article 11** (freedom of assembly and association) of the European Convention on Human Rights;
- it was not necessary to examine separately the complaints under Articles 9 (freedom of thought), 10 (freedom of expression), 14 (prohibition of discrimination), 17 (prohibition of abuse of rights) and 18 (limitations on use of restrictions on rights) of the Convention and Articles 1 (protection of property) and 3 (right to free elections) of Protocol No. 1.

1. Principal facts

The first applicant, Refah Partisi (the Welfare Party - "Refah") was a political party founded on 19 July 1983. The second applicant is its former Chairman, Necmettin Erbakan, a Member of Parliament at the material time. The third and fourth applicants, Şevket Kazan and Ahmet Tekdal, are politicians and lawyers and were Members of Parliament and Refah Vice-Chairmen at the time.

On 21 May 1997 Principal State Counsel at the Court of Cassation brought proceedings in the Turkish Constitutional Court to dissolve Refah, which he accused of having become "a centre of activities against the principle of secularism". In support of his application, he relied on various acts and declarations by leaders and members of Refah which he said indicated that some of the party's objectives, such as the introduction of sharia and a theocratic regime, were incompatible with the requirements of a democratic society.

Before the Constitutional Court the applicants' representatives argued that the prosecution had relied on mere extracts from the speeches concerned, distorting their meaning and taking them out of context. They also maintained that Refah, which at the time had been in power for a year as part of a coalition government, had consistently observed the principle of secularism and respected all religious beliefs and consequently was not to be confused with political parties that sought the establishment of a totalitarian regime. They added that Refah's leaders had only become aware of certain of the offending remarks in the case after Principal State Counsel's application for the dissolution of the party was served on them and that they had nonetheless expelled those responsible from the party to prevent Refah being seen as a "centre" of illegal activities for the purposes of the Law on the regulation of political parties.

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[1] Grand Chamber judgments are final.

In its judgment of 16 January 1998 the Constitutional Court dissolved Refah on the ground that it had become a "centre of activities against the principle of secularism". It also declared that Refah's assets were to be transferred to the Treasury. The Constitutional Court further held that the public declarations of Refah's leaders, and in particular Necmettin Erbakan, Şevket Kazan and Ahmet Tekdal, had directly engaged Refah's responsibility as regards the constitutionality of its activities. Consequently, it banned them from sitting in Parliament or holding certain political posts for five years.

2. Procedure and composition of the Court

The applications were lodged with the European Commission of Human Rights on 22 May 1998 and transmitted to the Court on 1 November 1998. They were joined and declared partly admissible on 3 October 2000. In its Chamber judgment (Third Section) of 31 July 2001 the Court held, by four votes to three, that there had been no violation of Article 11 of the Convention in the case and, unanimously, that no separate issues arose under Articles 9, 10, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1. On 30 October 2001 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 12 December 2001 the panel of the Grand Chamber accepted that request. A hearing was held on 19 June 2002.

Judgment was given by a Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), ***president,***
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Georg **Ress** (German),
Gaukur **Jörundsson** (Icelandic),
Lucius **Caflisch**[1] (Swiss),
Riza **Türmen** (Turkish),
Corneliu **Bîrsan** (Romanian),
Peer **Lorenzen** (Danish),
Volodymyr **Butkevych** (Ukrainian),
Nina **Vajić** (Croatian),
Matti **Pellonpää** (Finnish),
Margarita **Tsatsa-Nikolovska** (FYROMacedonia),
András **Baka** (Hungarian),
Rait **Maruste** (Estonian),
Anatoly **Kovler** (Russian),
Antonella **Mularoni** (San Marinese), ***judges***,

and also Paul **Mahoney**, ***Registrar***.

1. Judge elected in respect of Liechtenstein.

3. Summary of the judgment[1]

Complaints
The applicants complained, under Articles 9, 10, 11, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1.

Decision of the Court

Article 11 of the Convention

The parties had accepted that Refah's dissolution and the measures which accompanied it amounted to an interference with the applicants' exercise of their right to freedom of association under Article 11 of the Convention. The Court further considered that, in accordance with the requirements of paragraph 2 of Article 11, the interference had been prescribed by law and had pursued a legitimate aim. Under the terms of that paragraph, it remained to determine whether the interference had been "necessary in a democratic society".

Citing its case-law, the Court reaffirmed the close relationship between democracy and the Convention and also the primordial role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 11 and also in Article 10 (freedom of expression) of the Convention.

However, the freedoms guaranteed by Article 11, and by Articles 9 (freedom of religion) and 10 of the Convention, could not deprive the authorities of a State in which an association, through its activities, jeopardised that State's institutions, of the right to protect those institutions. The Court had previously held that some compromise between the requirements of defending democratic society and individual rights was inherent in the Convention system.

The Court considered that a political party might campaign for a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic in every respect; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily followed that a political party whose leaders incited violence or put forward a political programme which failed to respect one or more of the rules of democracy or which was aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy could not lay claim to the Convention's protection against penalties imposed on those grounds.

The Court reiterated, nevertheless, that the exceptions set out in Article 11 were, where political parties were concerned, to be construed strictly; only convincing and compelling reasons could justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 existed, the Contracting States had only a limited margin of appreciation. Provided that it satisfied the two conditions set out above, a political party animated by the moral values imposed by a religion could not be regarded as intrinsically inimical to the fundamental principles of democracy, as set forth in the Convention.

The Court further considered that the constitution and programme of a political party could not be taken into account as the sole criterion for determining its objectives and intentions. The political experience of the Contracting States had shown that in the past political parties with aims contrary to the fundamental principles of democracy had not revealed such aims in

1. This summary by the Registry does not bind the Court.

their official publications until after taking power. That was why the Court had always pointed out that a party's political programme might conceal objectives and intentions different from the ones it proclaims. To verify that it did not, the content of the programme had to be compared with the actions of the party's leaders and the positions they defended.

In making an overall assessment of the necessity of the interference and in particular whether it corresponded to a pressing social need, the Court found that the acts and speeches of Refah's members and leaders cited by the Constitutional Court were imputable to the whole of the party, that those acts and speeches revealed Refah's long-term policy of setting up a regime based on sharia within the framework of a plurality of legal systems and that Refah did not exclude recourse to force in order to implement its policy and keep the system it envisaged in place. Considering that these plans were incompatible with the concept of a "democratic society" and that the real opportunities Refah had to put them into practice made the danger to democracy more tangible and more immediate, the penalty imposed on the applicants by the Constitutional Court, even in the context of the restricted margin of appreciation left to it, might reasonably be considered to have met a "pressing social need".

The Court further concluded that the interference could not be regarded as disproportionate in relation to the aims pursued.

There were thus convincing and compelling reasons justifying Refah's dissolution and the temporary forfeiture of certain political rights imposed on the other applicants. It followed that Refah's dissolution might be regarded as "necessary in a democratic society" within the meaning of Article 11 § 2 and there had accordingly been no violation of Article 11.

Articles 9, 10, 14, 17, 18, and Articles 1 and 3 of Protocol No. 1

The Court did not consider it necessary to carry out a separate examination of the applicants' other complaints.

Judge Ress - joined by Judge Rozakis - and Judge Kovler expressed separate opinions, which are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*