



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CUMHURİYET HALK PARTİSİ v. TURKEY

(Application no. 19920/13)

JUDGMENT

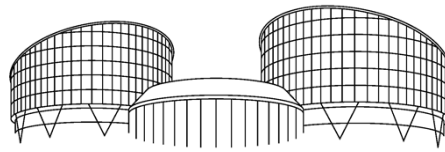
STRASBOURG

26 April 2016

FINAL

26/07/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

In the case of Cumhuriyet Halk Partisi v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Julia Laffranque, *President*,

Işıl Karakaş,

András Sajó,

Nebojša Vučinić,

Valeriu Griţco,

Ksenija Turković,

Jon Fridrik Kjølbro, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 22 March 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19920/13) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish political party, Cumhuriyet Halk Partisi (the People’s Republican Party – hereinafter referred to as “CHP” or “the applicant party”), on 16 March 2013.

2. The applicant party was represented by Mr B. Tezcan, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 15 September 2014 the applicant party’s complaints under Article 6 § 1 and Article 11 of the Convention and Article 1 of Protocol No. 1 to the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant party is a Turkish political party based in Ankara.

A. Preliminary information

5. Supervision of the finances of political parties in Turkey is entrusted to the Turkish Constitutional Court (“the Constitutional Court”) under Article 69 of the Constitution. Accordingly, all political parties are obliged to submit their consolidated final accounts annually to the Constitutional Court, which reviews the compliance of the political parties’ incomes and expenditure with the principles set out in Article 69 of the Constitution and sections 70-77 of Law no. 2820 on Political Parties (“the Political Parties Act”). Failure to comply with the relevant laws is subject to sanctions set out in the Political Parties Act. The decisions delivered by the Constitutional Court in this regard are final.

B. Inspection of the applicant party’s final accounts for the years 2007-2009

6. In keeping with the requirement under Article 69 of the Constitution and sections 74 and 75 of the Political Parties Act, the applicant party submitted the consolidated final accounts of its headquarters and local branches for the years 2007, 2008 and 2009 to the Constitutional Court for inspection. While the exact dates are unknown, it appears that the accounts were submitted within six months of the end of each respective fiscal year (that is, before 30 June) in accordance with section 74(2) of the Political Parties Act.

7. The Constitutional Court carried out a preliminary inspection on 1 July 2010 for the 2007 accounts and on 6 April 2011 for the 2008 and 2009 accounts. At the end of each preliminary inspection, it found the information submitted by the applicant party to be complete and decided to proceed with an examination on the merits.

8. On 7 October 2011, 29 November 2011 and 15 February 2012 the Constitutional Court sent the applicant party “questionnaires” in relation to its accounts for the years 2007, 2008 and 2009 respectively, whereby it requested the party to provide further information and documents regarding some of the expenses that it deemed problematic. It also requested the applicant party to provide the original invoices or other supporting documentation as required under Law no. 213 on Tax Procedure (“the Tax

Procedure Act”) for all items of expenditure that had not been submitted previously.

9. It appears that the applicant party responded to the Constitutional Court’s requests within fifteen to thirty days of their receipt; its responses are summarised in the appendix below. It was, however, unable to provide original invoices or the like for all the items of expenditure as requested.

10. On 7 March 2012 the Constitutional Court delivered its decision regarding the final accounts of the applicant party for the year 2007, which was followed by decisions pertaining to the 2008 and 2009 accounts, both delivered on 11 July 2012. The decision concerning the 2007 accounts was published in the Official Gazette on 5 April 2012 and the decisions for the 2008 and 2009 accounts were published on 20 September 2012.

11. In all three decisions the Constitutional Court found at the outset that the income and expenses presented in the final accounts were financially accurate. It also held that the income obtained in the period under review had been mostly in compliance with the rules on funding as set out in the Political Parties Act. As for the expenses, the Constitutional Court made the following preliminary remarks to explain the basis for its examination:

“One of the main tenets of accounting is the principle of ‘documentation’. Section 229 of the Tax Procedure Act explains that ‘an invoice is a commercial certificate given to a customer by a vendor or a merchant to indicate the amount owed by the customer in return for the goods sold or service provided’, and section 232, entitled ‘Obligation to use an invoice’, specifies under what circumstances and by whom an invoice must be received and provided. In this connection, it has been made obligatory to document purchases of goods and services with invoices and to use invoices as supporting documents in bookkeeping.

Section 236 of the same Act, entitled ‘Obligation of receipt’, states that ‘self-employed persons are under an obligation to issue a freelance receipt in duplicate for all payments received in relation to their professional activities and to give one copy to the customer; and the customer is under an obligation to request and receive such receipt’. The contents of a receipt have been set out in section 237.

Section 234 of the same Act, entitled ‘Expense note’, states that ... those [tradespersons exempt from taxation] who are under no obligation to furnish an invoice should issue expense notes.

Since section 70(3) of Law no. 2820 [the Political Parties Act] provides that expenses below five thousand liras¹ do not need to be substantiated with documents such as a receipt or an invoice, any expenses exceeding that amount must be based on a relevant supporting document.

Under section 70 of the Political Parties Act, ‘all expenses of a political party shall be incurred on behalf of the legal personality of that political party’ and pursuant to section 75 of the same Act, ‘at the end of its inspection, the Constitutional Court shall determine the accuracy and the lawfulness of the political party’s income and expenses, and shall order the registration of unlawful income and expenses as revenue with the State Treasury’.

¹ This amount, which is revised annually, was 48.86 Turkish liras (TRY) for 2007, TRY 52.37 for 2008 and TRY 58.65 for 2009.

Law no. 6111 ..., which was published in the Official Gazette dated 25 February 2011 [and which introduced some amendments to section 74 of the Political Parties Act], came into force on the date of its publication and it does not envisage ... the [retroactive] application of the amended provisions ...; therefore, the unamended provisions are to be applied to inspections and proceedings predating the amendments.”

12. On the basis of the principles outlined above, the Constitutional Court found that certain expenses incurred in the respective periods under review had been in violation of the Political Parties Act. The violations in question fell under two heads: the first head consisted of expenses that could not be considered to have been made “in pursuance of the objectives of the political party” and “in the name of the party’s legal personality” on the basis of a decision of the competent party organ, in accordance with section 70 of the Political Parties Act; and the second head concerned the expenses that had not been substantiated with the necessary documents as required under section 76, regardless of whether they were otherwise lawful. The Constitutional Court accordingly ordered the “confiscation of the party’s assets”² in the amounts corresponding to its unlawful expenditure for each respective year under review, as per sections 75 and 76 of the Act.

13. The details of the Constitutional Court’s findings are presented in the table below (the amounts indicated are in Turkish liras (TRY)):

Year	Total income		Total expenditure	Expenditure confiscated by the State for infringement of the Political Parties Act	
	State funding	Other sources		Undocumented expenses	Other unlawful expenses (not incurred in pursuance of the party’s purposes and/or in the party’s name)
2007	79,859,379	53,675,876	127,470,011	691,636	2,679,610
2008	20,471,032	50,088,000	49,227,118.86	82,952.66	1,349,304.64
2009	49,860,840	78,385,330	125,443,105	314,000	943,030.83

14. Further details regarding the individual expenses that were deemed unlawful by the Constitutional Court may be found in the appendix below.

1. Undocumented expenses

15. The Constitutional Court treated all expenses that were not supported by original invoices, freelance receipts or expense notes as

² Also referred to as the “registration of unlawful expenses as revenue with the State Treasury” throughout the text.

“undocumented”, referring to the strict requirements of documentation set out under the Tax Procedure Act as referred to in paragraph 11 above. The applicant party informed the Constitutional Court that in view of the sheer volume of documents circulating in the party, the originals of some invoices had been lost and submitted other documents as proof of payment. However, where the expense concerned an invoiceable transaction, the Constitutional Court did not accept as proof of payment vouchers, receipts, payment orders or even duplicates or notary-certified copies of invoices, and ordered the confiscation of the applicant party’s assets in the amounts corresponding to the undocumented expenses.

2. Other unlawful expenses

16. The expenses that were found not to have been incurred “in pursuance of the party’s objectives” and “in the name of the legal personality of the party” following a decision of the competent party organ, and those that were considered to “fall outside the party’s political activities”, covered a wide array of financial activities.

17. They included food, pharmaceutical and accommodation expenses, including those incurred by members of the party and employees of the party headquarters or its youth branches. Although the applicant party argued that the expenses in question had been incurred by the relevant individuals while on official duty, the Constitutional Court did not accept them as lawful expenses since the invoices had been drawn up in the individual members’ or employees’ names, rather than in the name of the party. Moreover, the applicant party had not submitted any other tangible evidence to demonstrate the professional nature of those expenses. In this connection, the Constitutional Court refused to accept that the food expenses of the driver assigned to the party leader and of other drivers working for the party could be lawfully met by the applicant party, in spite of the latter’s explanation that the relevant expenses had been incurred while the drivers were on duty.

18. Among the food expenses declared unlawful were expenses incurred by the head of the applicant party’s youth branch, F.P., who appears to have hosted six dinners in 2008 in connection with election work. The Constitutional Court accepted two of those meals as lawful expenses in relation to party work, but rejected the remaining four without any explanation.

19. Reimbursement of food and commuting expenses of persons not on the applicant party’s payroll and not party to the collective labour agreement between the applicant party and its salaried employees, such as freelance consultants, was not considered to be in keeping with the “party’s objectives”. Similarly, meals offered to persons who provided various services to the applicant party, but who were legally employed by other public or private bodies, such as police officers, municipality employees,

journalists or gardeners, could not qualify as legitimate expenses under the Political Parties Act because any meal costs had to be met by the relevant person's respective employers and not by the applicant party. Some dinners hosted for the applicant party's guests, volunteers or personnel for special occasions were also considered to constitute personal expenditure not related to the party's legal personality, whereas some other dinners were accepted as relevant to party work. In this connection, the Constitutional Court found that the expenses borne for the meals hosted for the Alevi-Bektaşî Federation and the Pir Sultan Abdal Association, as well as the meals organised for party personnel on the occasion of Bayram³ and following the death of an employee's father, should not have been paid from the party's budget, whereas it deemed legitimate the expenses in relation to food offered to Tekel⁴ workers during their industrial action.

20. The Constitutional Court also refused to accept a great number of travel expenses as lawful, because the bus and plane tickets in question had been prepared in the name of the individuals travelling rather than in the party's name, and the official decisions of the relevant party organs authorising travel had not been submitted. In addition, reimbursement of passport fees to various employees was not considered relevant to the party's objectives, even when the passports had been obtained for travel in connection with party business, as passports could be used for personal travel as well. The Constitutional Court also deemed costs for printing of business cards for employees to be unlawful, considering them to be personal expenses.

21. Payments made to employees apart from the entitlements specifically indicated in the collective labour agreement, including New Year bonuses (approximately 35 euros (EUR) per person in 2008) or bonuses to reward extra work during the general election period, were also deemed to fall outside the scope of the lawful expenditure provided for in the Political Parties Act. Moreover, chocolates distributed to party personnel for Eid al-Fitr (*Ramazan Bayramı*) in 2009 were found to be unlawful expenses, whereas no such finding was made in relation to the chocolates distributed during another religious holiday, Eid al-Adha (*Kurban Bayramı*). Blankets, umbrellas and raincoats purchased for use at the party headquarters were also found to be personal expenses, whereas no such finding was made for clothes and dishwashers purchased for the use of personnel.

22. In addition, payments made to security and cleaning personnel in excess of the amounts specifically indicated in the service agreements, where such excess amounts – no matter how meagre – could not be

³ Muslim religious holiday also known as Eid.

⁴ A former public company engaging in the production of tobacco and alcoholic beverages, privatised in 2008.

explained by increases in social security contributions or taxes, were considered unjustified and thus unlawful.

23. The Constitutional Court also found that the severance packages given to employees whose contracts had been terminated, which included basic severance pay, unused vacation time and benefits corresponding to unused leave, were not in compliance with the Labour Act and were therefore unlawful, as benefits corresponding to unused leave should not have been included in the severance packages.

24. The review of the financial accounts for the years 2007 to 2009 also revealed that the applicant party had paid court fees in various legal proceedings in which members of the party's senior management and/or its members of parliament, including its leader at the relevant time, had been involved. Although the applicant party stated that the legal proceedings in question had concerned the party's political activities, and not personal disputes, the Constitutional Court nevertheless decided that the litigation expenses had to be met by the persons in question, regardless of their role or status in the party, as the political party itself was not a party to any of the relevant proceedings. In the decision of 11 July 2012 concerning the review of the 2009 accounts (see paragraph 10 above), one of the judges dissented from the majority's approach to this matter, and argued that demanding that such costs be met by the individual members of the party involved directly in the litigation, regardless of the effects of that litigation on the political party, would unduly curtail the scope of the party's political activities in an unconstitutional manner.

25. Another payment that was considered unlawful by the Constitutional Court was made to Halk TV, a nationwide television channel, for the live broadcasting of political rallies and activities attended by the applicant party's leader and coverage of the party's parliamentary group meetings, press conferences, and important statements made by the party's senior management, as well as the distribution of that material to other media outlets. The Constitutional Court found that while the applicant party could lawfully pay for the live broadcast of the relevant events, additional payments to cover the costs of production and for the allocation of link bandwidth were unacceptable, as such costs had to be met by Halk TV itself. In addition, payments made in 2009 for the lease of vehicles for broadcasting rallies organised by the party in various provinces were considered unlawful unless accompanied by the relevant lease agreements and detailed information on the exact nature of the services acquired. The Constitutional Court also noted that an agreement had already been made with Halk TV for coverage of the applicant party's political rallies and other events.

26. Fuel and other expenses (such as installation of sound systems, speakers and microphones) for the vehicles owned or leased by the party and its local branches were accepted as having been made in the party's

name and for its purposes only where the vehicle registration certificates or lease agreements had been submitted to the Constitutional Court along with the invoices. As for fuel and other expenses for vehicles made available to the party by volunteers during the election campaigns, they were deemed entirely unlawful in the absence of any contracts with the volunteers for the use of the relevant vehicles.

27. The Constitutional Court held that gold coins given as wedding gifts at wedding ceremonies attended by the applicant party's leader on behalf of the party could not be considered to have been made in the name of the party or in pursuance of its objectives. Similarly, the costs of flowers sent by the applicant party's treasurer for special events could not be classified as lawful expenses where the invoice had been drawn up not in the party's name but in the name of the treasurer.

28. The Constitutional Court also held that fines for traffic violations by the party's drivers, as well as fines or interest on late payment of various financial obligations, such as social security contributions, court orders, rents or motor vehicle taxes for the party's vehicles, could not be lawfully covered from the party's budget, and had to be met by the individuals who had been responsible for defaulting on such payments.

29. Moreover, the Constitutional Court found that advance payments made to fifty-two employees in 2009 had only been partially repaid. In the light of the prohibition in section 72 of the Political Parties Act against lending money, the advance payments in question were unlawful and were thus confiscated in full (including the amounts that had been repaid by the relevant employees).

3. Warnings

30. The Constitutional Court also issued a number of warnings in relation to certain expenditure in 2008 and 2009.

31. One of those warnings concerned the payment of employees' salaries. Although the applicant party had submitted the relevant payment orders, it had not provided bank statements demonstrating that the amounts ordered had actually been paid. The Constitutional Court warned the applicant party to submit such bank statements with its consolidated accounts to demonstrate that the payments in question had indeed been made.

32. Another warning was issued in relation to a payment made to a private company in return for installing a sound system for an election bus. The Constitutional Court requested the applicant party to submit a technical report indicating when the work had been completed and a record stating that the bus had been duly delivered. The applicant party responded that there was no legal obligation to prepare such documents. The Constitutional Court held that in the absence of such information, it could not know whether the service had been delivered on time and, if not, whether the

service provider had paid the penalty envisaged in the service agreement for defaulting on its obligation.

33. Yet another warning was issued about the incompatibility between the party's expenses and its inventory, in that a number of items allegedly purchased for the party (three televisions and one computer) had not been registered in the inventory.

34. The Constitutional Court also issued a warning in connection with advance payments made to some employees in 2009, in addition to ordering the confiscation of the applicant party's assets in the full amount of the advance payments in question (see paragraph 29 above).

C. Payments made by the applicant party to the State Treasury

1. Payments in relation to the 2007 final accounts

35. On 11 May 2012 the applicant party received a letter from the Ankara governor's office ordering it to pay the amounts indicated in the Constitutional Court decision concerning the review of the 2007 final accounts, which totalled TRY 3,372,446 (approximately EUR 1,435,000 on 7 March 2012, the date of the delivery of the decision), within thirty days of the receipt of the letter.

36. On 23 May 2012 the applicant party sent a letter to the Ankara governor's office requesting postponement of the payment until January 2013, in view of the financial difficulties it would suffer for the rest of 2012 in the event of immediate payment of the amounts concerned.

37. On 12 March 2013 the Ministry of Finance informed the applicant party that the payments due in relation to the 2007 final accounts had been deducted from the State funding allocated to it on 10 January 2013 for that year, together with interest of TRY 176,211 running from the date on which the payment had become due (namely 12 June 2012). The amount deducted thus totalled approximately TRY 3,549,000 (approximately EUR 1,527,000 on 10 January 2013).

2. Payments in relation to the 2008 and 2009 accounts

38. On 31 October 2012 the applicant party received a letter from the Ankara governor's office ordering it to pay the amounts indicated in the Constitutional Court decisions concerning the review of the 2008 and 2009 final accounts, plus interest, which totalled approximately TRY 3,738,700 (approximately EUR 1,604,000 as at 31 October 2012), within ten days of the receipt of the letter.

39. On 6 November 2012 the applicant party sent a letter to the Ankara governor's office, once again requesting the postponement of the payments due in relation to its 2008 and 2009 accounts until January 2013.

40. On 15 January 2013 the applicant party paid TRY 1,432,257.30 (approximately EUR 605,212 at the material time) to the State Treasury for its unlawful expenses, in compliance with the Constitutional Court's review decision for the year 2008, and TRY 1,257,030.83 (approximately EUR 531,168 at the material time) for the decision regarding the accounts for the year 2009. It refused to pay the interest, which it contested before the relevant authorities.

41. On 7 June 2013 the applicant party paid the State Treasury the sum of TRY 45,920 (approximately EUR 18,460) as default interest on the amounts confiscated in relation to its 2008 and 2009 accounts.

D. Subsequent developments

42. On 30 March 2014 local elections were held in Turkey.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. Article 69 of the Turkish Constitution, concerning the principles to be observed by political parties, reads as follows:

“The income and expenditure of political parties shall be consistent with their objectives. The application of this rule shall be regulated by law. The auditing of the income, expenditure and acquisitions of political parties, as well as the establishment of the conformity with the law of their income and expenses, methods of auditing and sanctions to be applied in the event of non-conformity, shall also be regulated by law. The Constitutional Court shall be assisted in performing its task of auditing by the Court of Accounts. The judgments rendered by the Constitutional Court as a result of the auditing shall be final.”

44. The relevant sections of the Political Parties Act, which entered into force on 24 April 1983, provided as follows at the material time:

Section 70

“The expenditure of political parties may not be inconsistent with their objectives.

All expenditure of a political party shall be incurred on behalf of the legal personality of the political party.

There is no obligation to substantiate expenditure lower than five million liras [amount updated annually] with a document such as a receipt or invoice. However, all expenditure shall be based on a decision by the competent organ or body [of the party]. No decision shall be required in so far as expenditure not exceeding five million liras [amount updated annually] and general rate-based charges are concerned, provided that such expenditure was forecast in the budget authorised by the relevant organ [of the party].”

Section 72

“Political parties may not give loans to their members or to other natural or legal persons.”

Section 74

“The inspection of [financial accounts] of political parties shall be carried out by the Constitutional Court. The Constitutional Court shall inspect the conformity of the political parties’ acquisitions, income and expenditure with the law.

...”

Section 75

“...

At the end of its inspection, the Constitutional Court shall determine the accuracy and lawfulness of the political party’s income and expenditure, and shall order the registration of unlawful income and expenditure as revenue with the State Treasury.

...”

Section 76

“...

A party’s assets in the amount of the [its] undocumented expenditure shall be registered as revenue with the State Treasury.”

Section 104

“The Chief Public Prosecutor shall lodge an *ex officio* application with the Constitutional Court against any political party which is in breach of the mandatory provisions of this Act, except for section 101, as well as other laws concerning political parties.

If the Constitutional Court finds a breach of the relevant provisions, it shall issue the political party in question with a warning to rectify the breach.

...”

Additional section 1

“... [Financial] assistance [received from the State] shall only be used for the party’s needs or in relation to the party’s work.”

45. On 13 February 2011 the following subsections were added to section 74 of the Political Parties Act:

“... However, the lawfulness review may not be conducted in a manner which restricts activities that are deemed necessary for the fulfilment of the objectives of the political party or which rules on their appropriateness. The review shall focus on the essence of the expenditure. Deficiencies regarding form and procedure do not require the refusal of expenditure.

...

Political parties may incur all expenses within the scope of the political activities that they deem necessary for the fulfilment of their objectives.

...

Political parties shall substantiate their expenditure with invoices, [with] documents that serve as invoices, [or] in the event that the submission of such documents is not

possible, with other documents the contents of which may verify the veracity of [their] expenditure. However, if [the] originals cannot be procured owing to *force majeure* ..., certified copies obtained from the issuer may be used instead of the original invoices or [other] documents that serve as invoices.

A political party may register as expenses the health and social assistance benefits it pays in kind and in money to persons it employs temporarily or permanently, in return for payment, [as well as] the accommodation, transport and other necessary expenses incurred during domestic or international travel by persons assigned to fulfil the [party's] objectives.”

46. The relevant sections of the now defunct Act on the Establishment and Rules of Procedure of the Constitutional Court (Law no. 2949) provided as follows:

Section 18

“The duties and powers of the Constitutional Court are as follows:

...

5. To inspect the lawfulness of political parties’ acquisition of property and their income and expenditure.”

Section 30

“The Constitutional Court shall examine cases on the basis of a written procedure, except where it sits as the Supreme Criminal Court (*Yüce Divan*); where it deems necessary, it may summon the persons concerned to hear their oral explanations...”

47. Sections 16 and 17 of the Internal Regulations of the Constitutional Court (*Anayasa Mahkemesi İçtüzüğü*), as in force at the material time, which set out the details of the inspection to be carried out by the Constitutional Court of political parties’ financial accounts, provided as follows:

Section 16: Preliminary examination

“Certified copies of the consolidated final accounts [of a political party] ... submitted to the Constitutional Court shall be examined by the rapporteurs assigned by the Presidency [of the Constitutional Court].

The rapporteurs shall examine whether the final accounts submitted to them have been prepared in accordance with sections 73 and 74 of the Political Parties Act and whether any [substantive] factual error or inconsistency exists in the final account statements. Where necessary, they shall directly request information from the ... relevant [party] officials on these matters.

...

The rapporteurs shall present their reports to the Presidency within two months at the latest; where relevant, they shall indicate any deficiencies, errors or inconsistencies, and state how these may be remedied.

...

The party shall be given a reasonable time-limit not exceeding three months to remedy any deficiencies, errors and inconsistencies.

In cases where there are no deficiencies, errors or inconsistencies or where they are duly remedied, a decision shall be taken to proceed with an examination on the merits.

The relevant party shall be informed of this decision.”

Section 17: Examination on the merits

“The examination on the merits shall be conducted [with a view to establishing] the accuracy and lawfulness of the income and expenditure of political parties.

The examination of accuracy shall consist of the examination of the books and documents on which the final accounts are based.

The examination of lawfulness shall seek to establish whether income has been obtained from the sources indicated in sections 61-69 of the Political Parties Act and whether expenses have been incurred in accordance with sections 70-72 [of the same Act].

The appointed rapporteurs shall first examine the annual budgets, the books, the income and expense records and other relevant documents at the party headquarters and compare them with the final accounts. Where necessary, they may request documentation verifying the information in the final accounts of the local branches and request an explanation. Where they deem it necessary to carry out an on-site inspection, they shall submit this request to the Presidency in writing. Thereupon the Constitutional Court shall determine the actions to be taken in the light of section 75 of the Political Parties Act.

The rapporteurs shall submit the conclusions of the examination on the merits to the Presidency, together with their opinions, and shall be present in court during the deliberations on the merits and make the necessary explanations.

...

The financial inspection decisions shall be published in the Official Gazette.”

III. RELEVANT INTERNATIONAL AND COMPARATIVE LAW

A. Law and practice in Council of Europe member States

48. The Court has reviewed the legislation of thirty Council of Europe member States⁵ with the aim of obtaining comparative data regarding the legal framework on the monitoring of political parties’ finances and expenditure.

49. It appears that while almost all of the member States surveyed (except for Malta and Switzerland) subject political parties’ finances to

⁵ Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Sweden, Switzerland, Ukraine and the United Kingdom.

inspection by a specific monitoring body designated by law, the type of body itself varies considerably, with the existence of a vast array of models of inspection. Inspection of parties' accounts occurs quarterly, annually or biannually in most States, and not merely during election campaigns.

50. The member States surveyed are divided regarding the detail in which the scope of the monitoring powers is defined. While some member States provide for tailored and relatively delimited monitoring powers, others grant broader or less defined powers to monitoring bodies.

51. The majority of the States surveyed impose some form of restrictions on political party expenditure, either exclusively during election campaigns or also outside those periods. An obligation to document expenses also exists in most of the States surveyed; however, the stringency of the requirements varies.

52. Sanctions for failure to comply with the rules on expenditure exist in a variety of forms in most member States, ranging from warnings and administrative fines to the loss or suspension of party funding, dissolution of the party or even criminal penalties.

53. The Court notes overall that there appears to be a consensus in respect of the monitoring of political parties' finances; however, the means by which each member State achieves that aim varies widely.

B. Other international material

54. The Guidelines on Political Party Regulation (CDL-AD(2010)024) drawn up by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the European Commission for Democracy through Law ("the Venice Commission") and adopted by the Venice Commission on 15-16 October 2010, read as follows:

"Introduction

...

6. Political parties are private associations that play a critical role as political actors in the public sphere. Striking the appropriate balance between state regulation of parties as public actors and respect for the fundamental rights of party members as private citizens, including their right to association, requires well-crafted and narrowly tailored legislation. Such legislation should not interfere with freedom of association.

...

Fundamental Rights Given to Political Parties

11. Freedom of association is the central right that governs the functioning of political parties. A set of recognized universal, European and other regional treaties has given the right to full exercise of free association, including for the formation of political associations, to all individuals... As such, groups of individuals choosing to associate themselves as a political party must also be awarded full protection of related rights. The rights of free association, expression, and assembly may only be limited where necessary in a democratic society.

...

Principles

...

Principle 3. Legality

16. Any limitations imposed on the right of individuals to free association and expression should have their formal basis in the state's constitution or parliamentary acts... The law must be clear and precise, indicating to political parties both what activities are considered unlawful and what sanctions are available in cases of violations...

Principle 4. Proportionality

17. Any limitations imposed on the rights of political parties must be proportionate in nature and effective at achieving their specified purpose. Particularly in the case of political parties, given their fundamental role in the democratic process, proportionality should be carefully weighed and prohibitive measures narrowly applied. As stated above, the only restrictions imposed should be those that are necessary in a democratic society and prescribed by law. If restrictions do not meet such criteria, they cannot rightly be deemed as proportionate to the offence...

Principle 8. Good Administration of Legislation Pertaining to Political Parties

21. ...The scope and authority of regulatory agencies should be explicitly determined by law... Decisions affecting the rights of political parties must be made in an expeditious manner...

Principle 10. Accountability

23. Political parties may obtain certain legal privileges, due to being registered as a political party, that are not available to other associations... As a result of having privileges not granted to other associations, it is appropriate to place certain obligations on political parties due to their acquired legal status. This may take the form of imposing reporting requirements or transparency in financial arrangements. Legislation should provide specific details on the relevant rights and responsibilities that accompany the obtainment of legal status as a political party."

55. The interpretative notes on the guidelines provide as follows:

"General Principles

...

Legality

49. Any restrictions on free association must have their basis in law of the state constitution or parliamentary act, rather than subordinate regulations, and must in turn conform to relevant international instruments. Such restrictions must be clear, easy to understand, and uniformly applicable to ensure that all individuals and parties are able to understand the consequences of breaching them. Restrictions must be necessary in a democratic society ... To ensure restrictions are not unduly applied, legislation must be carefully constructed to be neither too detailed nor too vague.

Proportionality

50. ...

Proportionality should be considered on the basis of a number of factors, including:

- The nature of the right in question;
- The purpose of the proposed restriction;
- The nature and extent of the proposed restriction;
- The relationship (relevancy) between the nature of the restriction and its purpose;
- Whether there are any less restrictive means available for the fulfillment of the stated purpose in light of the facts.

...

Regulation of Party and Campaign Finance

...

Political Finance Reporting Requirements

201. Article 7(3) of the United Nations Convention against Corruption (UNCAC) obligates signatory states to make good faith efforts to improve transparency in election candidate and political party financing. Political finance disclosure is the main policy instrument for achieving such transparency.

202. Political parties should be required to submit disclosure reports to the appropriate regulatory authority at least on an annual basis even in the non-campaign period. These reports should require disclosure of incoming contributions and an explanation of all expenditures.

...

Monitoring of Political Parties - Establishment of Regulatory Bodies

...

Scope and Mandate of Regulatory Bodies

219. There should be a clear delineation of which bodies are responsible for the regulation of political parties, as well as clear guidelines establishing their functions and the limits of their authority.

...

221. Legislation should clearly define the decision making process for regulatory bodies. Bodies charged with supervision of political parties should refrain from excessive control over party activities. The majority of these functions are internal party matters and should only come to the attention of state authorities in exceptional circumstances and then only to ensure compliance with the law.

...

Sanctions against Political Parties for Non-compliance with Laws

224. Sanctions should be applied to political parties found in violation of relevant laws. Sanctions at all times must be objective, enforceable, effective and proportionate to their specific purpose...

225. There should be a variety of sanctions for non-compliance with laws. As noted above, sanctions must bear a relationship to the violation and respect the principle of proportionality. Such sanctions should include:

- Administrative fines, the amount of which should consider the nature of the violation, including whether the violation is a reoccurring violation;

- Partial or total loss of public funding and other forms of public support, which could be imposed as a temporary measure for a set period of time;
- Ineligibility for future state support for a set period of time;
- Partial or total loss of reimbursement for campaign expenses;
- Forfeiture to the state treasury of financial support previously transferred to or accepted by a party;
- Ineligibility for presenting candidates in elections for a set period of time;
- Criminal sanctions in cases of significant violations, imposed against the party members who are responsible for the violation;
- Annulment of a candidate's election to office, but only as determined by a court of law after compliance with applicable legal protections for due process of law and only if the legal violation likely impacted the electoral result;
- Loss of registration status for the party.”

56. The Guidelines on Legislation on Political Parties: Some Specific Issues (CDL-AD(2004)007rev), adopted by the Venice Commission on 12-13 March 2004, state in paragraph 11 of the Explanatory Report:

“Far-reaching autonomy of political parties is a cornerstone of the freedoms of assembly and association and the freedom of expression as protected by the European Convention on Human Rights. As the European Court of Human Rights has stated, the Convention requires that interference with the exercise of these rights must be assessed by the yardstick of what is ‘necessary in a democratic society’.”

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

57. The Government submitted that the applicant party’s complaints had to be rejected for failure to comply with the six-month time-limit in so far as they concerned the Constitutional Court’s decision of 7 March 2012 on the 2007 accounts. They stated that the relevant decision, which was final, had been served on the applicant party on 4 April 2012 and had been published in the Official Gazette on 5 April 2012. The applicant party should therefore have lodged its application with the Court within six months of the date on which the Constitutional Court’s decision was served, regardless of when the financial consequences of that decision materialised.

58. The applicant party responded that the six-month time-limit in question should run from 10 January 2013, namely the date on which it received funding from the State for the year 2013, minus the amount confiscated in relation to its 2007 accounts. It asserted that the exact amount of its liability for the 2007 accounts had only become clear on the date when the money was actually confiscated by the State, because prior to that date it

would not have been possible to calculate the default interest that had accrued.

59. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months of the final decision in the process of exhaustion of domestic remedies (see *M.N. and Others v. San Marino*, no. 28005/12, § 44, 7 July 2015). The aims of that rule were recapitulated by the Grand Chamber in the case of *Sabri Güneş v. Turkey* ([GC], no. 27396/06, §§ 39-40, 29 June 2012). The Court further reiterates that where an applicant is entitled to be served automatically with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V; *Dayanan v. Turkey*, no. 7377/03, § 24, 13 October 2009; and *Sabri Güneş*, cited above, § 53).

60. Turning to the facts before it, the Court notes that the decision concerning the applicant party's 2007 accounts was delivered by the Constitutional Court on 7 March 2012. It is not disputed between the parties that the decision in question was served on the applicant party on 4 April 2012 and that no appeal lay against it. In these circumstances, according to the well-established case-law of the Court, the applicant party should have lodged its complaints concerning that decision within six months of 4 April 2012, whereas it waited until 16 March 2013 to bring those complaints before the Court. The applicant party argued that it could not be expected to have lodged the application any earlier owing to the uncertainty regarding the amount of default interest it would have to pay, which only became clear when the State actually confiscated its money on 10 January 2013. In the Court's opinion, the applicant party's arguments could have been taken into consideration had its complaints concerned exclusively or predominantly the amount of default interest paid to the State. However, bearing in mind that the complaint in question related to the merits of the inspection conducted by the Constitutional Court of its 2007 accounts, the six-month time-limit must be calculated from the date on which the Constitutional Court's final decision was served in relation to that inspection.

61. It follows that the complaints concerning the review of the applicant party's 2007 accounts are inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

62. The applicant party complained that the confiscation orders made by the Constitutional Court on account of alleged irregularities in its

expenditure for the years 2008 and 2009 had put a substantial financial strain on its political activities, thus violating its right to freedom of association under Article 11 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

63. The Court notes at the outset that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

64. The Court has confirmed on a number of occasions the essential role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 11 of the Convention. Political parties are a form of association essential to the proper functioning of democracy. In view of the role played by political parties, any measure taken against them affects both freedom of association and, consequently, democracy in the State concerned (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 87, ECHR 2003-II, and *Republican Party of Russia v. Russia*, no. 12976/07, § 78, 12 April 2011). The Court will therefore examine whether the sanctions imposed by the Constitutional Court on the applicant party in the instant case constituted an interference with its right to freedom of association, and if so, whether that interference was justified.

A. Whether there was an interference

1. The parties' arguments

(a) The Government

65. The Government submitted that political parties, as indispensable elements of democratic political life, were under an obligation to expose their activities, including their financial activities, to public scrutiny for purposes of “clarity”, which could only be achieved through supervision of their finances. The Constitutional Court, which was tasked by the Constitution with this duty of supervision, had accordingly inspected the applicant party’s financial accounts for the years 2007, 2008 and 2009 and had found some of its expenses to be in violation of the Political Parties Act,

leading to the registration of the party's assets as revenue with the Treasury in amounts equivalent to the unlawful expenditure. The amounts in question were, however, relatively low in comparison with the applicant party's income for the years under review. Moreover, most of the applicant party's income came from State funding. In the light of those factors, the impugned decisions of the Constitutional Court did not constitute an interference with the applicant party's right to freedom of association.

(b) The applicant party

66. The applicant party maintained that when a political party was deprived of part of its funds, it fell into financial difficulties that inevitably weakened its capacity to compete in the political arena, which was what had happened to it in the instant case. It submitted that, as a result of the financial constraints caused by the impugned decisions of the Constitutional Court, it had been forced to curtail some of its expenditure envisaged for 2013. In this connection, the funding allocated to the local branches had been substantially reduced (by a total of TRY 2,434,000, which equalled approximately EUR 1,030,860 as at 1 January 2013), leading to the closure of some of those branches. Similarly, funding for the women's and youth branches and for the training programmes had been drastically cut back. The headquarters had also faced difficulties in bearing its administrative costs, as the forfeited amount had swept away approximately 43% of the funds allocated for the administrative budget, which roughly corresponded to 158 days' administrative costs.

2. The Court's assessment

67. The Court notes that following its inspection of the applicant party's final accounts for the years 2008 and 2009, the Constitutional Court declared some of its expenditure to be unlawful under the Political Parties Act, and ordered the confiscation of the applicant party's assets in an amount equalling the unlawful expenditure. The amount in question, which totalled approximately TRY 2,735,208 (approximately EUR 1,154,840), including interest, was paid to the Treasury in 2013.

68. The applicant party alleged that the financial sanctions imposed by the Constitutional Court had deprived it of the means to perform some of its political activities and had thus constituted an interference with its freedom of association. It maintained that since the amounts imposed as sanctions in relation to its 2007, 2008 and 2009 accounts had all been paid in 2013, it had been forced to cut back on the expenditure envisaged for that year, which had resulted in the postponement or cessation of some of its political activities and put it in a disadvantageous position *vis-à-vis* its competitors.

69. The Court acknowledges the necessity of supervising political parties' financial activities for purposes of accountability and transparency, which serve to ensure public confidence in the political process. In view of

the fundamental role played by political parties in the proper functioning of democracies, the general public may be deemed to have an interest in their being monitored and in sanctions being imposed for any irregular expenditure, particularly as regards political parties that receive public funding, such as the applicant party. The Court therefore agrees with the Government that the inspection of political parties' finances does not in itself raise an issue under Article 11.

70. The Court notes, moreover, that there is no uniform practice across the Council of Europe member States regarding the oversight of political parties' financial accounts (see paragraph 53 above). Member States enjoy a relatively wide margin of appreciation regarding how they inspect political parties' finances and the sanctions they may impose for irregular financial transactions.

71. That being said, this margin of appreciation is not unlimited and where the inspection of the finances of a political party has the effect of inhibiting its activities, it may amount to an interference with the right to freedom of association.

72. Turning to the facts before it, the Court notes the applicant party's allegations, which were not disputed by the Government, regarding the impact of the financial sanctions imposed by the Constitutional Court on its political activities, particularly as regards its local branches, women's and youth branches and training programmes. It appears that the sanctions in question have had a considerable impact on the applicant party's activities, but it stresses that the full impact of these sanctions cannot be taken into account, having regard to the finding of inadmissibility in respect of the sanctions concerning the 2007 accounts (see paragraph 61 above). It nevertheless notes that the sanctions pertaining to the 2008 and 2009 accounts alone involved a total amount of TRY 2,735,208 (approximately EUR 1,154,840). That amount more than accounts for the cuts suffered by the local branches in 2013, which had increased significance in view of the upcoming local elections in March 2014. Contrary to the Government's allegations, the Court does not consider that amount to be negligible. Accordingly, it finds that the sanctions in question constituted an interference with the applicant party's political activities and thus its freedom of association under Article 11 of the Convention. The fact that part of the applicant party's annual income is made up of State funding (see the table in paragraph 13 above) does not change the Court's finding in this regard, because the provision of financial support to political parties does not give States carte blanche to interfere in their political and/or financial affairs. The Court notes in any event that, contrary to the Government's allegations, State funding for the years 2008 and 2009 made up only about one-third of the applicant party's total income.

B. Whether the interference was justified

73. An interference will constitute a breach of Article 11 unless it was “prescribed by law”, pursued one or more of the legitimate aims set out in paragraph 2 of that provision and was “necessary in a democratic society” for the achievement of those aims (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 51).

1. The parties’ arguments

(a) Whether the interference was lawful

(i) The Government

74. The Government submitted that section 61 of the Political Parties Act included a list of ways in which a political party could lawfully obtain income. However, the Act did not include a similar list in relation to the expenses that were permissible within the scope of the objectives of a political party. This matter was instead left to the Constitutional Court to determine. The Government submitted that many of the expenses found to be unlawful by the Constitutional Court in the instant case, such as travel expenses and other individual expenses not accompanied by a decision of a competent organ of the party, the purchase of medicine for staff members, the payment of default interest and late fees for delayed payments, and the payment of traffic fines and other such penalties, had also been penalised by the Constitutional Court in the past. In this connection, the Government referred to a number of decisions delivered by the Constitutional Court in December 2010 against other political parties. According to the Government, the Constitutional Court had thus developed consistent case-law on this matter, which could serve as a guide for political parties in regulating their income and expenses, particularly bearing in mind that all decisions of the Constitutional Court were published in the Official Gazette.

75. The Government acknowledged that following amendments made to section 74 of the Political Parties Act, the scope of political parties’ expenses was extended and parties could thenceforth themselves determine the political activities which they deemed necessary for their purposes. The amendments in question did not, however, apply to the inspection of the applicant party’s financial accounts in the present case, as those accounts preceded the entry into force of the amendments.

76. As for the obligation to provide supporting documents for expenses over a certain amount, the Government stated that the type of document required was similarly not specified in the relevant law itself. The Constitutional Court had therefore taken into account the relevant provisions of the Tax Procedure Act to assist in its inspection. The Government added, however, that following the adoption of amendments to

section 74 of the Political Parties Act, political parties' expenditure could now be supported by other documents if it was not possible to furnish original invoices because of *force majeure*.

77. Moving on to the sanctions provided for under the Political Parties Act for infringements, the Government stated that there were various sanctions available, including the confiscation of the political party's assets in amounts corresponding to its undocumented expenditure. There was also the possibility of criminal sanctions, including imprisonment, where the Constitutional Court's inspection was hindered on account of a failure to submit consolidated final accounts, or any other documents requested, in time and/or in full. Under section 102 of the Act, a failure to submit consolidated final accounts to the Constitutional Court could also bring about the withholding of State funding. Section 104 further provided for a warning mechanism, whereby the Constitutional Court could issue a warning against a political party that infringed the mandatory provisions of the Political Parties Act or of any other relevant laws. In its decisions forming the subject matter of the present application, the Constitutional Court had found certain expenses of the applicant party to be unlawful as they had not been consistent with its objectives and/or had fallen outside the scope of its political activities, they had not been made in the name of the legal entity of the party or they had not been substantiated with original invoices. Accordingly, the party's assets in amounts corresponding to those unlawful items of expenditure had been registered as revenue with the Treasury. The applicant party had also been warned about some of its expenditure.

(ii) *The applicant party*

78. The applicant party contended that the interference with its right to freedom of association had not been "prescribed by law" within the meaning of Article 11 of the Convention. It stated that the interference in question was based principally on Article 69 § 3 of the Constitution, which provided that "the income and expenditure of political parties shall be consistent with their objectives". There was, however, no guidance in the law or elsewhere to clarify what expenses could be lawfully incurred within the scope of the "objectives of a political party" or what would be considered to constitute "political activities". Moreover, section 74(1) of the Political Parties Act, which entrusted the Constitutional Court with the duty of inspecting the "lawfulness" of the finances of political parties, was also framed in imprecise terms, thereby leaving that court at liberty to adopt an overly formalistic and restrictive interpretation of the vague requirements of the Act. That uncertainty as regards the exact nature of the expenditure requirements, coupled with the lack of precision regarding the scope and extent of the Constitutional Court's authority, had made it impossible to foresee the possible consequences of the expenses incurred. By way of

example, it had had no way of knowing that travel expenses, legal fees or court costs, gifts and flowers presented at weddings, or official dinners connected to the party's political activities could not lawfully be charged as party expenses.

79. The applicant party stressed that the Constitutional Court decisions referred to by the Government as precedents had all been delivered in 2010. They could not, therefore, have provided any guidance for the party to regulate its expenditure in the relevant period. The applicant party submitted in any event that in the absence of solid legal criteria on political party expenditure, it had not been possible to ensure consistency in the inspections carried out by the Constitutional Court, and argued that this ran counter to the principle of legal certainty.

80. The applicant party further drew the Court's attention to the fact that section 74 of the Political Parties Act had been amended in 2011. While the applicant party had not been allowed to benefit from those amendments, some of the changes introduced corresponded to the grievances it had subsequently raised before the Court. In particular, amendments made to subsection (1) of section 74 (see paragraph 45 above) were proof that until that time, supervision of political parties' finances by the Constitutional Court had been applied in a manner that unduly restricted their activities and scrutinised their appropriateness. The amendments in question had therefore brought much needed precision to the Act as regards the inspection of political parties' expenses.

81. As for the sanctions available under the relevant Act, the applicant party repeated that it was not clear when the sanction of "registration as revenue with the State Treasury" would be applied, in the absence of clear criteria on what constituted expenditure that fell within the objectives or the scope of the political activities of a political party. As for warnings, the applicant party maintained that there were likewise no criteria to clarify the circumstances in which warnings could be issued and that it was at the discretion of the Constitutional Court to issue warnings as it saw fit. The applicant party contended that similar circumstances sometimes entailed the more serious sanction of confiscation of assets, while at other times they attracted warnings; as such, it was not possible to foresee when a warning would be issued.

82. In support of its arguments, the applicant party referred to the guidelines issued by the OSCE/ODIHR and the Venice Commission on Political Party Regulation, which stated in paragraph 16 that any law that imposed limitations on the right of individuals to free association "must be clear and precise, indicating to political parties both what activities are considered unlawful and what sanctions are available in cases of violations" (see paragraph 54 above).

(b) Whether the interference pursued a legitimate aim and was “necessary in a democratic society”

(i) The Government

83. The Government argued that the sanctions in question had pursued a number of legitimate aims, such as securing the fulfilment of the functions of political parties, protecting their constitutional position, ensuring respect for the “principle of clarity” in democratic societies and informing the public, and that they had also been necessary in a democratic society for the achievement of those aims. The Government also argued that the amounts confiscated from the applicant party were relatively low in comparison with the latter’s income for the years under review.

(ii) The applicant party

84. The applicant party submitted in response that none of the legitimate aims referred to by the Government had been mentioned by the Constitutional Court in its decisions. As such, the Government’s claims in this regard were unfounded. Moreover, the Government could not demonstrate any relation between the sanctions imposed and the legitimate aims pursued.

85. The applicant party further maintained that where the confiscation of the assets of a political party forced it to curtail its expenditure and cease its activities on account of the resulting financial hardship, such a measure could not be considered to be proportionate to any legitimate aims pursued, if such aims ever existed. The applicant party stressed that while the Government had argued that the amounts confiscated were relatively low in comparison with the party’s income, that consideration had no relevance to the “test of proportionality” set by the Court. The adverse consequences of the impugned sanctions imposed on the party had already been brought to the Court’s attention (see paragraph 66 above). Those consequences had been brought about by the Constitutional Court’s subjective and restrictive interpretation of the legal requirements on expenditure and the formalities regarding the provision of supporting documentation, and did not as such concern any abuse, corruption or other financial crime on the part of the party. In view of the nature of the irregularities in question, including those concerning documentation, it would have been more proportionate to issue warnings or give prior notice for rectification, but the relevant Act did not provide for such a possibility. In those circumstances, it could not be accepted that the sanctions imposed had been necessary in a democratic society.

2. The Court’s assessment

86. The Court reiterates that the expression “prescribed by law” requires firstly that the impugned measure should have a basis in domestic law. It

also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 57).

87. The Court notes that the parties agreed that the inspection of the applicant party's financial accounts, and the resulting sanctions, had been based on Article 69 § 3 of the Constitution and sections 70-76 of the Political Parties Act. Therefore, formally, the interference in the instant case had a basis in domestic law. The Court further notes that there was no dispute as to the accessibility of the provisions in question. The applicant party nevertheless claimed that the provisions in question did not satisfy the "lawfulness" requirement under Article 11 § 2 of the Convention because, firstly, they did not enable a political party to foresee the types of expenses that would be considered unlawful by the Constitutional Court as falling outside the scope of its "objectives", and secondly, they lacked clarity as to the sanctions that would be applied in the event of a finding of unlawfulness.

88. Before embarking on its examination, the Court would stress that while the important purpose served by the financial inspection of political parties is undeniable, such inspection should never be used as a political tool to exercise control over political parties, especially on the pretext that the party is publicly financed. In order to prevent the abuse of the financial inspection mechanism for political purposes, a high standard of "foreseeability" must be applied with regard to laws that govern the inspection of the finances of political parties, in terms of both the specific requirements imposed and the sanctions that a breach of those requirements entails. The importance of the autonomy of political parties in democratic societies and of the need for narrowly tailored legislation to curb State regulation of parties has also been highlighted in the guidelines of the OSCE/ODIHR and the Venice Commission (see paragraphs 54-56 above). The Court will now examine whether the requisite standard of foreseeability was attained in the relevant Turkish laws in force at the material time.

(a) Foreseeability of "unlawful expenses"

89. The Court observes from the relevant domestic law (see paragraphs 43 and 44 above), as well as from the decisions of the Constitutional Court under discussion, that a finding of unlawfulness in relation to a political party's expenses arises in the following situations: (i) where expenses have not been incurred in pursuance of the "objectives of a political party" and "in the name of the party's legal personality" following a decision by the competent organ of the party; or (ii) where expenses have not been substantiated with the necessary documents, regardless of whether they

were otherwise lawful. The Court notes at the outset that the applicant party's complaints under this head pertained to the former situation. As such, they did not involve any allegations of unforeseeability regarding the documentation requirements (see paragraphs 78-81 above). The Court will therefore confine its examination accordingly.

90. The Court notes that it is undisputed between the parties that prior to the amendments introduced in 2011, the Political Parties Act did not offer any guidance on how the "objectives of a political party" would be interpreted for the purposes of the inspection to be carried out by the Constitutional Court, and what activities would fall outside the scope of those objectives. The Government indeed confirmed that while a list of unlawful sources of income was provided in section 61 of the Political Parties Act, no such list was provided for unlawful expenses. The Court similarly notes that prior to the amendments in question, there was no provision in the Political Parties Act or elsewhere specifying the nature and scope of the inspection to be carried out by the Constitutional Court. The Court therefore finds *prima facie* that the relevant domestic law did, technically, suffer from a lack of precision in those respects.

91. Having said that, the Court also notes the Government's submissions that the guidance lacking in written law had been provided by the Constitutional Court, which had, through its decisions over the years, made it clear what type of expenses would qualify as having been incurred in pursuance of the objectives of a political party. Accordingly, in the Government's submission, many of the expenses that the Constitutional Court declared unlawful in the applicant party's 2008 and 2009 accounts had precedents in past decisions of the Constitutional Court.

92. The Court acknowledges that it is not possible, or desirable, to attain absolute precision or rigidity in the framing of laws, and many of them are inevitably couched in terms which, to a greater or lesser extent, are vague. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain. Therefore, the mere fact that a legal provision can be interpreted in more than one way does not mean that it fails to meet the requirement of "foreseeability" for the purposes of the Convention (see, among others, *Refah Partisi (the Welfare Party) and Others*, cited above, § 57, and *Zhechev v. Bulgaria*, no. 57045/00, § 40, 21 June 2007).

93. The Court further points out that, according to its settled case-law, the concept of "law" must be understood in its "substantive" sense, not its "formal" one. It therefore includes everything that goes to make up the written law, including court decisions interpreting the law (see, *mutatis mutandis*, *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A). The Court must therefore determine whether the Constitutional Court had indeed developed consistent, clear and precise case-law at the material time, as alleged by the Government, that would have allowed the applicant party to

foresee how the otherwise ambiguous requirements of the Constitution and the Political Parties Act on political party expenditure would be interpreted and enforced in practice and to regulate its conduct accordingly (see, *mutatis mutandis*, *Association Ekin v. France*, no. 39288/98, § 46, ECHR 2001-VIII).

94. In this connection, the Court firstly observes that the Constitutional Court decisions referred to by the Government as precedents do in fact deal with some expenses that were found to have been incurred unlawfully by the applicant party in 2008 and 2009. However, the Court also notes that the decisions in question were delivered in December 2010, that is, after the final accounts of the applicant party were submitted to the Constitutional Court for inspection. As such, the Court cannot accept their value as precedents for the purposes of the instant case.

95. In these circumstances, the Court considers that the Government have not provided any established case-law indicating that the manner and scope of the Constitutional Court's review and its interpretation of the relevant lawfulness requirements gave reason to anticipate a finding of unlawfulness in relation to the items of expenditure at issue. The applicant party's allegations of unforeseeability therefore remain unrebutted.

96. The Court further notes that the Constitutional Court decisions in question also contained some inconsistencies as to the criteria to be applied in the assessment of the lawfulness requirements, which added to their unpredictability. The Court notes, for instance, that as regards most of the unlawful expenses in question, it is not clear whether they were considered to be entirely incompatible with the objectives of the party and outside the scope of its political activities, or whether some of them would have been deemed lawful if they had been supported by a "decision of the competent body of the party" as required under section 70 of the Political Parties Act. The Court notes by way of example that while for some expenses the Constitutional Court requested an express authorisation from the competent party organ, for others an explanation as to the nature of the expense was found to be sufficient without a supporting decision. For instance, although expenses for food offered to Tekel workers during their industrial action were found to be lawful on the sole basis of the explanation provided, the meals hosted for some federations or associations were deemed unlawful (see paragraph 19 above). Similarly, the applicant party's explanation that the dinners organised in 2008 by the head of its youth branch had concerned election work was accepted in relation to two of those meals, and rejected for the rest, without any justification (see paragraph 18 above).

97. In the Court's opinion, the legal uncertainty brought about by the unforeseeability of the lawfulness requirements imposed by the Constitutional Court was further exacerbated by the delays encountered in the inspection procedure, in the absence of any time-limits set out in the law. The Court notes in this connection that it took the Constitutional Court,

which conducted the entire inspection on the basis of a written procedure, approximately three years to finalise its inspection of the 2008 accounts and two years for the 2009 accounts. Bearing in mind the significant financial interests at stake for the applicant party, the Constitutional Court should have acted with special diligence to finalise the inspections in a timely manner, which would also have allowed the applicant party to regulate its conduct in order to avoid facing sanctions for similar expenditure in the following years (see the applicant party's argument in paragraph 112 below).

(b) Foreseeability of applicable sanctions

98. The applicant party submitted that the Constitutional Court had issued warnings in relation to some of its expenses. However, it was not clear why the expenses in question had attracted warnings instead of the more serious sanction of confiscation of assets, in the absence of any guidance in the relevant Act as to when warnings, as opposed to confiscation orders, would be issued. In the applicant party's opinion, this matter was left completely to the discretion of the Constitutional Court, which compounded the problem of unforeseeability.

99. The Government, for their part, did not contest the applicant party's claims in this regard and limited their response to confirming the availability of a warning mechanism under section 104 of the Political Parties Act.

100. The Court notes that the issue of sanctions to be applied for unlawful expenditure is dealt with in the Political Parties Act. Section 76 of the Act, entitled "Sanctions for violations of financial provisions", provides that a political party's assets in the amount of its undocumented expenditure will be registered as revenue with the State Treasury. Section 104 provides that the Constitutional Court may serve a political party with a warning for any breach of the mandatory provisions of the Act at the request of the chief public prosecutor attached to the Court of Cassation.

101. The Court firstly notes that section 76, which is dedicated specifically to the sanctions for violations of the financial provisions of the Act, provides for a sanction only in relation to expenses for which there is no documentary evidence, and makes no mention of expenses declared unlawful on other grounds, such as for being contrary to the objectives of a political party. The Court, however, considers this to be a technical oversight, for it is clear from the wording of section 75 concerning the inspection duty of the Constitutional Court, as well as from the case-law of that court as demonstrated in its relevant decisions in the present case, that "registration as revenue with the State Treasury" mentioned in section 76 is a sanction applicable to all types of unlawful expenses.

102. What appears more problematic, however, is the warning mechanism provided for in section 104 of the Political Parties Act. The

Court notes that although the aforementioned section 76 does not refer to a “warning” as an available sanction in relation to a violation of the financial provisions, section 104 is drafted in sufficiently broad terms to cover breaches of *all* mandatory provisions of the Act. Therefore, in theory, expenditure by a political party that contravenes sections 70-76 of the Act may be subject to a warning. This fact has been confirmed by the Government in their observations. It is also borne out by the decisions of the Constitutional Court at issue. The Court, however, has identified two main problems with the warnings issued by the Constitutional Court in the instant case.

103. Firstly, the Court notes that the warnings at issue were not triggered by an application from the chief public prosecutor as required by section 104. This, coupled with the absence of a specific reference by the Constitutional Court to section 104 in its decisions, creates an ambiguity as to the actual legal basis of those warnings.

104. Secondly, it is not clear from the Political Parties Act, or from the Government’s submissions, when a warning, as opposed to a confiscation order, may be issued in relation to expenditure that falls foul of the requirements of the Act. Nor is it possible to derive any clarification from the text of the Constitutional Court’s decisions in the instant case or from the nature of the expenses that were the subject of warnings, which do not appear to be different in nature from other unlawful expenses that resulted in confiscation orders. The Court notes, by way of example, that the Constitutional Court issued a warning on account of the applicant party’s failure to support the payment orders in relation to employees’ salaries with bank statements (see paragraph 31 above), whereas the submission of payment orders alone in relation to some other expenses resulted in confiscation orders (see paragraph 15 above). The Court further notes that the Constitutional Court issued both a confiscation order and a warning in relation to one of the unlawful items of expenditure in the 2009 accounts, without providing any justification for its decision (see paragraph 34 above).

105. The Court reiterates that for a law to pass the “prescribed by law” test in Article 11 § 2 of the Convention, it must be formulated with sufficient precision to enable an individual to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate his conduct accordingly (see, for instance, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 81, 14 September 2010, and *Refah Partisi (the Welfare Party) and Others*, cited above, § 57). The Court considers, however, that in the present case the applicant party was not able to foresee whether and when unlawful expenditure would be punished by a warning or a confiscation order. Considering the serious consequences that a confiscation order may entail for a political party, the domestic law should have set out more precisely the

circumstances in which such a sanction could be applied as opposed to the less intrusive sanction of a warning.

(c) Conclusion

106. The Court considers that in modern societies, the activities undertaken by political parties in furtherance of their objectives will necessarily span a wide spectrum, ranging from purely political endeavours to more ancillary activities that are nevertheless essential to a political party's existence. The Court further recognises the difficulty involved in providing comprehensive criteria to determine which of those activities may be considered to be in keeping with the objectives of a political party and to be genuinely related to party work. Nevertheless, having regard to the important role played by political parties in democratic societies, any legal regulations which may have the effect of interfering with their freedom of association, such as the inspection of their expenditure, must be couched in terms that provide a reasonable indication as to how those provisions will be interpreted and applied. In the instant case, the lack of precision of the relevant legal provisions, coupled with the apparent failure of the Constitutional Court to establish consistent case-law at the material time on how such provisions would be interpreted in practice deprived the applicant party of the possibility of regulating its expenditure accordingly. The Court notes that the amendments introduced to section 74 of the Political Parties Act in 2011 sought to remedy that vagueness, in terms of both the activities in relation to which a political party may incur expenses, and the scope of the Constitutional Court's powers in reviewing the lawfulness of expenditure on those activities. Although the Court is not in a position to comment on the appropriateness of those amendments from the standpoint of Article 11 § 2 of the Convention, it nevertheless considers that they aimed to bring some clarity to the political parties' entitlements and obligations regarding their expenditure, which the legislature must have considered was lacking.

107. Having regard to the foregoing, and to its considerations regarding the ambiguity of the applicable sanctions for unlawful expenditure, the Court concludes that the condition of foreseeability under Article 11 § 2 was not satisfied in the instant case and that, accordingly, the interference in question was not prescribed by law.

108. In these circumstances, the Court need not ascertain whether the other requirements of the second paragraph of Article 11 of the Convention were complied with in the instant case – namely, whether the interference pursued one of the legitimate aims stated in that paragraph and whether it was necessary in a democratic society in pursuance of such an aim (see *Sanoma Uitgevers B.V.*, cited above, § 101, and, *mutatis mutandis*, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 42, ECHR 1999-VIII). The Court notes in particular that in so far as the

applicant party complained that the application of the sanction of “confiscation”, as opposed to that of a “warning”, was disproportionate in view of the nature of the alleged irregularities in its accounts, including those concerning shortcomings in documentation, the issue has been dealt with sufficiently in this judgment.

109. It follows that there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

110. The applicant party maintained, under Article 6 § 1 of the Convention, that it had been denied a fair trial because no public hearing had been held before the Constitutional Court in relation to the inspection of its accounts and because the proceedings before that court had not complied with the principles of adversarial procedure and equality of arms. It further argued that the proceedings had not been concluded within a reasonable time and there had been no opportunity to object to the decisions of the Constitutional Court.

111. The Government contended that Article 6 was not applicable in the instant case. They stated that the proceedings before the Constitutional Court had not involved a lawsuit in the classic sense, but had merely concerned the financial audit of the applicant party’s accounts. Moreover, the proceedings had been “public” in nature and had not as such concerned the determination of the applicant party’s civil rights and obligations. Alternatively, the Government argued that the proceedings before the Constitutional Court had been fair because the applicant party had had the opportunity to duly participate in the process through the responses it had provided to the “questionnaires” sent by the Constitutional Court. Moreover, having regard to the complexity of the financial inspection procedure, the proceedings in question had been completed within a reasonable time. The Government stressed in this connection that annual inspections had been carried out in respect of the final accounts of not only the headquarters of all political parties, of which there were seventy-eight in 2013, but also their local branches in eighty-one provinces and more than 800 districts. The variations in the different political parties’ accounting systems and delays on the part of parties in completing their submissions had also prolonged the inspection process.

112. The applicant party argued that Article 6 was applicable to the proceedings at issue as the outcome of those proceedings, which involved the confiscation of the political party’s assets, had had a direct impact on its property rights. In response to the Government’s remaining arguments, the applicant party maintained its original allegations. Accordingly, it stated that the written procedure before the Constitutional Court had deprived it of

the opportunity to submit arguments on the application of the relevant laws to its accounts. It also claimed that the length of the proceedings in question, which had prevented it from taking timely action to prevent future sanctions on similar matters, could not be explained by their complexity given that the entire proceedings had been conducted on the basis of the files, without any hearings. It also argued that there had been no fault or delay attributable to it.

113. The Court considers at the outset that the crux of the applicant party's complaint regarding the excessive length of the proceedings, including the adverse impact that their unreasonable prolongation had on its future accounts, has been sufficiently dealt with as part of its examination under Article 11 (see paragraph 97 above). The Court therefore considers that it is not necessary to examine this complaint separately under Article 6 of the Convention.

114. The Court further notes that the parties disagreed as to whether Article 6 was applicable to the proceedings before the Constitutional Court. The Court does not find it necessary to rule on this disagreement since the remaining complaints under Article 6 are, in any event, inadmissible for the following reasons (see *Meimanis v. Latvia*, no. 70597/11, § 44, 21 July 2015).

115. As regards the complaint concerning the absence of a public hearing, the Court considers that while it is true that in proceedings before a court of first and only instance, such as in the instant case, the right to a "public hearing" under Article 6 § 1 entails, in principle, an entitlement to an "oral hearing", exceptional circumstances may justify dispensing with such a hearing. The nature of the issues before the competent national court plays a decisive role here (see *Hesse-Anger and Anger v. Germany* (dec.), no. 45835/99, ECHR 2001-VI (extracts))). In the instant case, the proceedings before the Constitutional Court concerned the inspection of the applicant party's financial accounts, which, as the Government stated, is a highly technical matter that may be sufficiently dealt with by way of a written procedure. Although the applicant party was not able to appear before the Constitutional Court to present its arguments orally, it had the opportunity to comment in writing on the expenses which the Constitutional Court deemed problematic and which later formed the basis of its findings of unlawfulness, and also to provide further information as requested (see table in the annex below). The Court reiterates in this connection that according to its case-law, a hearing may not be necessary, for example, when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see, among many other authorities, *Keskinen and Veljekset Keskinen Oy v. Finland*, no. 34721/09, § 33, 5 June 2012, and *Meimanis*, cited above, § 49). Having regard to the special nature of the proceedings in question, the applicant party has not made it clear how an oral hearing would have

provided a better opportunity to defend the lawfulness of the expenditure in question, especially given that Article 6 of the Convention does not guarantee the right to personal presence before a civil court, but rather a more general right to present one's case effectively before the court (see, among others, *Margaretić v. Croatia*, no. 16115/13, § 127, 5 June 2014). The Court also wishes to stress that political parties subject to financial inspection were not altogether deprived of the right to an oral hearing, as under section 30 of the now defunct Act on the Establishment and Rules of Procedure of the Constitutional Court of Turkey, the Constitutional Court could invite representatives of political parties to hear their explanations regarding their finances where it deemed this necessary, which it apparently did not do in the instant case.

116. As for the allegation that the proceedings in question failed to comply with the principles of adversarial proceedings and equality of arms, the Court reiterates that the right to an adversarial trial means the opportunity for the parties to have knowledge of and comment on the observations filed or evidence adduced with a view to influencing the court's decision (see, for instance, *Kress v. France* [GC], no. 39594/98, § 74, ECHR 2001-VI, and *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262). It also includes the right of the parties to submit any observations that they consider relevant to their case (see, for instance, *Andrejeva v. Latvia* [GC], no. 55707/00, § 96, ECHR 2009, and *Clinique des Acacias and Others v. France*, nos. 65399/01, 65406/01, 65405/01 and 65407/01, § 37, 13 October 2005). The requirement of equality of arms in turn implies that each party must be afforded a reasonable opportunity to present his or her case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* the other party (see *Andrejeva* [GC], cited above, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). Having regard, in particular, to the unilateral nature of the proceedings in question, and to the written observations it submitted in relation to the expenses that had been identified as problematic by the Constitutional Court, the applicant party has not established, on the facts of the instant case, that the principles of adversarial proceedings and equality of arms were infringed.

117. Lastly, as regards the argument that the applicant party had no opportunity to object to the decisions of the Constitutional Court, the Court reiterates that no right to appeal arises from Article 6 of the Convention (see, for instance, *Delcourt v. Belgium*, 17 January 1970, §§ 25-26, Series A no. 11, and *Jung v. Germany* (dec.), no. 5643/07, 29 September 2009).

118. Having regard to the foregoing, the Court considers that even assuming that Article 6 applies to the constitutional proceedings in the instant case, the complaints under Article 6 § 1 of the Convention, except for those concerning the length of the proceedings, are manifestly

ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

119. The applicant party complained, under Article 1 of Protocol No. 1 to the Convention, that the confiscation orders made by the Constitutional Court in relation to its 2008 and 2009 accounts had violated its property rights, and referred to the arguments it had submitted under Article 11 of the Convention.

120. The Government contested the applicant party's argument.

121. The Court does not consider the applicant party's complaint under Article 1 of Protocol No. 1 to the Convention to be manifestly ill-founded within the meaning of Article 35 §§ 3 of the Convention. It further notes that it is not inadmissible on any other grounds and must, therefore, be declared admissible. However, the Court also notes that this complaint concerns the same facts as those examined under Article 11. It therefore considers that it is not necessary to examine it separately (see, *mutatis mutandis*, *Refah Partisi (the Welfare Party) and Others*, cited above, § 137).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

123. In respect of pecuniary damage, the applicant party requested the restitution of the amounts confiscated by the State Treasury following the impugned decisions of the Constitutional Court. In this connection, it claimed 3,548,657 Turkish liras (TRY) (approximately 1,527,000 euros (EUR) as at the date of confiscation) in relation to the 2007 accounts, TRY 1,434,042.30 (approximately EUR 605,966 as at the date of confiscation) in relation to the 2008 accounts and TRY 1,257,030.83 (approximately EUR 531,168 as at the date of confiscation) in relation to the 2009 accounts. It also claimed TRY 45,920, which was the default interest paid on the amounts confiscated in relation to the 2008 and 2009 accounts. The applicant party further requested that statutory default interest be applied to those amounts from the confiscation dates until the date of

delivery of the Court's judgment. It did not make a claim in respect of non-pecuniary damage.

124. The Government argued that there was no causal link between the alleged violations and the alleged pecuniary damage.

125. Having regard to its finding of inadmissibility in relation to the inspection of the applicant party's 2007 accounts, the Court rejects the claim in respect of pecuniary damage for that year. However, in view of its finding of a violation of Article 11 in paragraph 109 above as regards the inspections of the 2008 and 2009 accounts, the Court considers it justified to award the applicant party the amounts confiscated for those years in full, including the interest of TRY 45,920. The Court notes, however, that the amount in question for 2008 is TRY 1,432,257.30 and not TRY 1,434,042.30 as claimed by the applicant party, the difference of TRY 1,785 having been confiscated as unlawful income, which falls outside the scope of the current application. The confiscated amount for the relevant period therefore totals TRY 2,735,208.13.

126. The Court rejects the applicant party's claim for the award of statutory default interest on the relevant amount. However, it deems it reasonable to increase the award to TRY 3,457,525 (equivalent to approximately EUR 1,085,800), to account for inflation⁶.

B. Costs and expenses

127. The applicant party also claimed TRY 31,250 (approximately EUR 10,495) for the costs and expenses incurred before the Court.

128. The Government contested the applicant party's claim, deeming it unsubstantiated in the absence of any proof of payment.

129. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

⁶ This amount was determined by using the calculation tool provided on the official website of the Turkish Central Bank, which takes as its reference the retail price index published by the Institute of Statistics of Turkey (TUIK).
(http://www3.tcmb.gov.tr/enflasyoncalc/enflasyon_anayeni.php)

C. Default interest

130. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 11 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible in so far as they relate to the applicant party's 2008 and 2009 accounts;
2. *Holds* that there is no need to examine the admissibility or the merits of the complaint concerning the length of proceedings under Article 6 § 1 of the Convention;
3. *Declares* the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 11 of the Convention;
5. *Holds* that there is no need to examine the merits of the complaint under Article 1 of Protocol No. 1 to the Convention separately;
6. *Holds*
 - (a) that the respondent State is to pay the applicant party, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,085,800 (one million eighty-five thousand eight hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant party, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant party's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Julia Laffranque
President

APPENDIX

Below are two tables demonstrating the main expenditure that the Constitutional Court declared unlawful following its inspection of the applicant party's 2008 and 2009 accounts, respectively, and the observations provided by the latter in relation to that expenditure. The tables do not include the expenses declared unlawful for lack of documentation.

I. 2008 accounts

Expense	Explanation provided by the applicant party	Constitutional Court's decision and amount confiscated (TRY)
Plane and bus tickets	Tickets purchased for travel of party members and personnel in relation to party work.	Not based on decision of a competent organ. (2,699.5)
Business cards	No explanation.	Personal expenses outside the scope of political activities. (737.5)
Passport renewal fee	No explanation.	Personal expenses outside the scope of political activities. (500.3)
Medical and pharmaceutical expenses	Expenses incurred by party personnel.	Personal expenses outside the scope of political activities. (293.9)
Court expenses in relation to legal proceedings initiated by/against some senior members of the party	No explanation.	Personal expenses outside the scope of political activities. (1,603.45)
Purchase of flowers	Flowers purchased and sent in the name of the party's treasurer.	Personal expenses outside the scope of political activities. (1,357)
Payment of food and travel expenses of personnel employed on fixed-term contracts	Payments made to meet food and travel expenses of fixed-term employees who are not party to the collective labour agreement.	Such expenses can only be met in relation to personnel employed under collective labour agreement; the party cannot be responsible for food and travel expenses of other personnel. (3,028.19)
Default interest, late fees and penalties for defaulting on various payments	Expenses arising from inadvertent failure to make certain payments in relation to party work on time.	Such expenses cannot be met from the party's budget because the political party cannot be held responsible for its personnel's failure to discharge their financial obligations on time. (69,873)

Purchase of gold coins	Gold coins offered as gifts in wedding ceremonies attended by the party's leader on behalf of the party.	Expenses outside the scope of political activities. (24,307)
New Year bonus to personnel (not envisaged in the collective labour agreement)	Such assistance, made in cash or in kind, for special occasions does not need to have a basis in the collective labour agreement, considering in particular that political parties are under no obligation to enter into a collective labour agreement.	New Year bonuses are not amongst the personnel entitlements listed in the collective labour agreement; therefore such expenses cannot be considered to have been part of the party's political activities. (6,525)
Payment exceeding the amount indicated in a service agreement	While the exact reason for the extra payment could not be remembered having regard to the amount of time that has passed since, the payment in question was in all likelihood made for purchase of additional services.	In the absence of proof of additional service, payment exceeding the amount indicated in the service agreement may not be deemed lawful. (11,500)
Severance package for employees	The package included severance pay, plus the relevant employees' unused leave entitlements and benefits corresponding to the unused days of leave.	Calculation of severance package not in compliance with the Labour Act as the benefits corresponding to the unused days of leave should not be taken into account. (5,658.81)
Food expenses (4,638 meals)	Food offered to volunteers.	In the absence of further details as to who received the food, the expenses in question may not be deemed lawful. (21,367.8)
Food expenses (2,455 meals)	Food offered to gardeners, journalists, police officers, workers at the Çankaya Municipality and other persons not employed by the applicant party.	There is no legal basis for covering these persons' food expenses, as their food and other expenses should be (or are) met by their own respective employees. (9,993.52)
Food expenses (63 meals)	According to the explanations provided by the applicant party, included in these expenses were meals hosted for the Alevi-Bektaşî Federation and the personnel of the party headquarters. It did not, however, provide an explanation regarding the remaining meals.	In the absence of further details as to these meals, the expenses in question may not be deemed lawful. (65,528.75)
Food expenses (16 meals)	Food expenses of the private driver of the party leader.	In the absence of further details, the expenses in question may not be deemed lawful. (600.1)
Food expenses	Food expenses borne by the head of the youth branch in relation to	In the absence of further details, some of the expenses in question

	election work.	may not be deemed lawful. (7,565)
Payment made to cleaning personnel (pay increase)	The applicant party submitted the renewable service agreement dated 23 June 2006 and the relevant wage slips.	It is not clear from the service agreement how the pay rise was calculated for 2008; therefore, the rise cannot be considered to have been awarded lawfully. (8,688)
Payment made to security personnel (pay increase)	The applicant party submitted the renewable service agreement dated 1 September 2006.	Payments made to security personnel in 2008 exceeded the amount that should have been given according to the service agreement; the excess payment may not be deemed lawful. (125,794.32)
Payment made to a television channel (Halk TV) for the costs of live coverage, production and allocation of link bandwidth	Payment made to Halk TV for the costs of coverage, broadcasting and distribution of the party's parliamentary group meetings, press conferences and important statements by the party's senior management, political rallies and activities attended by the party's leader.	In the absence of any specific decision by the competent party organ, payments made in relation to the costs of production and allocation of link bandwidth, which should be met by the TV channel, may not be deemed lawful. (755,200)
Car fuel expenses (2 cars)	No explanation.	In the absence of information as to the ownership of the cars in question, the payment of car fuel expenses may not be deemed lawful. (240)

II. 2009 accounts

Expense	Explanation provided by the applicant party	Constitutional decision and Court's amount confiscated (TRY)
Default interest, late fees and penalties for defaulting on various payments and administrative fines (such as traffic tickets and towing fees)	Expenses arising from inadvertent failure to make certain payments in relation to party work on time.	Such expenses cannot be lawfully met from the party's budget because the political party cannot be held responsible for its personnel's failure to discharge their financial obligations on time or for other conduct that led to administrative fines. (985.21)
Purchase of gold coins	Gold coins offered as gifts in wedding ceremonies attended by the party's leader on behalf of the party.	Expenses outside the scope of political activities. (20,150)
Purchase of toner and water for Halk TV	Expenses of Halk TV were inadvertently registered in the party's accounts. The error has been rectified in the current accounts and the relevant amount has been registered as debt owed by Halk TV.	Even if the relevant amount has been registered as debt, the expense should not have been incurred by the party in the first place. (715.54)
Passport fee	Passport fees paid by the party for travel of party members and personnel in relation to party work.	Personal expenses outside the scope of political activities. (1,170.4)
Business cards	Business cards pertaining to party personnel and the party representative in Brussels.	Personal expenses outside the scope of political activities. (354)
Legal expenses in relation to judicial proceedings initiated by/against some senior members of the party, including compensation proceedings brought in Germany by Deniz Feneri E.V. (association founded in Germany) against the party leader and a member of the party's board of directors and proceedings	The legal proceedings in question had been initiated by or against the party's leader, secretary-general, treasurer and others in senior management for their party-related work and do not concern private disputes.	Personal expenses outside the scope of political activities. (47,631.87) <u>Dissenting opinion:</u> the legal expenses concerning the proceedings involving Deniz Feneri E.V. and TRT concerned the party's legal personality. Expecting such costs to be met personally by the party members would limit the scope of political activity, in contravention of the Constitution.

brought by an MP against the national public broadcaster (TRT)		
Pharmaceutical expenses	Expenses incurred by party personnel.	Personal expenses outside the scope of political activities. (215.3)
Plane and bus tickets	No explanation.	Personal expenses outside the scope of political activities. (2,082)
Purchase of blankets (x4), umbrella (x1) and raincoat (x2)	All items purchased for use at the party headquarters.	Personal expenses outside the scope of political activities. (190)
Money transferred to the party's Brussels office	Money sent to cover the expenses of the Brussels office. The applicant party submitted the payment orders made by the party and proof of payment for some of the expenses incurred by the Brussels office.	Expenses for which no documentary proof was submitted are not considered lawful on the basis of the payment orders alone.
Accommodation expenses of E.T. (a professor of law) in a hotel in Ankara	No explanation.	Personal expenses outside the scope of political activities. (332.99)
Purchase of chocolate	Chocolate distributed to the party personnel for Bayram (Muslim religious holiday also known as Eid).	Personal expenses outside the scope of political activities. (2,349)
Purchase of flowers	Flowers purchased and sent in the name of the party's treasurer.	Personal expenses outside the scope of political activities. (3,830)
Severance package for an employee	The package included severance pay, plus the employee's unused leave entitlements and benefits corresponding to the unused days of leave.	Calculation of severance package not in compliance with the Labour Act as the benefits corresponding to the unused days of leave should not be taken into account. (3,230.29)
Food expenses (2,443 meals)	Food offered to gardeners, painters, journalists, police officers, workers at the Çankaya Municipality and other unknown persons not employed by the applicant party. The applicant stated that they saw no harm in offering food to these persons, who were either guests of or offering services to the party, considering in particular the absence of any establishments in the vicinity for the purchase of food.	There is no legal basis for covering these persons' food expenses, as their food and other expenses should be (or are) met by their own respective employees. (21,811.55)

Food expenses (63 meals)	According to the explanations provided by the applicant party, included in these expenses were a meal hosted for the Pir Sultan Abdal Association, meals organised for party personnel on the occasion of Bayram and following the death of a party employee's father, and the food expenses of the private driver of the party leader and other drivers working for the party.	In the absence of further details as to these meals, the expenses in question may not be deemed lawful. (21,733)
Expenses for various vehicles (including purchase of fuel and installation of sound systems, speakers and microphones)	All vehicles in question are the property of the party's provincial and district branches.	The party was expected to submit registration documents for the vehicles owned by it, lease agreements for the vehicles leased, and contracts signed with volunteers for the vehicles made available by them. In the absence of such documents, expenses in relation to these vehicles may not be deemed to have been made in the name of the party and in accordance with the party's political objectives. (122,749.4)
Payment made to security personnel (overtime pay)	The party submitted the service agreement entered into with the security company.	The overtime pay made to security personnel exceeds the amount agreed in the service agreement and thus may not be considered lawful. (15,735.23)
Payment made to cleaning personnel	The party submitted the service agreement entered into with the cleaning company on 15 January 2009.	The payment made to cleaning personnel after July 2009 exceeds the amount agreed in the service agreement and thus may not be deemed lawful. (8,142)
Lease of outside broadcast vehicles	Vehicles leased for the broadcast of rallies organised by the party in various provinces.	In the absence of the lease agreements or explanation as to why these vehicles were leased, the expenses in question may not be deemed lawful, considering in particular that there is already an agreement with Halk TV for the live broadcast of the party's political rallies. (30,680)
Advance payments made to personnel	The party submitted a list of the advance payments made to	The advances given to the party personnel were not

	personnel as of the end of 2008 and repayments made by the relevant personnel.	repaid in full, and therefore they should be regarded as loans rather than advances. In the light of the prohibition in the Political Parties Act against the lending of money by political parties to their members or other natural and legal persons, the amounts in question may not be deemed to be lawful expenses. (326,085) The Constitutional Court also decided to issue a <u>warning</u> in this regard.
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