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

CASE OF FREEDOM AND DEMOCRACY PARTY (ÖZDEP) v. TURKEY

(Application no. 23885/94)

JUDGMENT

STRASBOURG

8 December 1999

In the case of Freedom and Democracy Party (ÖZDEP) v. Turkey,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr P. KŪRIS,
Mr J.-P. COSTA,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs W. THOMASSEN,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mrs S. BOTOUCHAROVA,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,

and also of Mr P.J. MAHONEY and Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrars*,

Having deliberated in private on 22 April and on 24 November 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the European Commission of Human Rights ("the Commission") on 24 September 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 23885/94) against the Republic of Turkey lodged with the Commission under former Article 25 by a Turkish political

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Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

party, the Freedom and Democracy Party (ÖZDEP), acting through its Chairman, Mr Mevlüt İlik, on 21 March 1994.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 11 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A[1], the applicant party stated that it wished to take part in the proceedings and designated the lawyer who would represent it (former Rule 30). The lawyer was given leave by the President of the Court at the time, Mr R. Bernhardt, to use the Turkish language in the written procedure (former Rule 27 § 3).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr Bernhardt, acting through the Registrar, consulted the Agent of the Turkish Government ("the Government"), the applicant party's lawyer and the Delegate of the Commission, on the organisation of the written procedure. Pursuant to the order made in consequence on 15 October 1998, the Registrar received the applicant party's memorial on 6 January 1999 and the Government's memorial on 8 February 1999.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr R. Türmen, the judge elected in respect of Turkey (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mrs F. Tulkens, Mrs V. Strážnická, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4). Subsequently Mrs Palm, Mrs Strážnická and Mr Maruste, who were unable to take part in the further consideration of the case, were replaced by Mr L. Caflisch, Mr K. Jungwiert and Mrs W. Thomassen, substitute judges (Rule 24 § 5 (b)).

5. On 12 January 1999 Mr Wildhaber exempted Mr Türmen from sitting after his withdrawal from the case in the light of the decision of the Grand

1. *Note by the Registry*. Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

Chamber taken in accordance with Rule 28 § 4 in the case of Oğur v. Turkey (application no. 21594/93).

On 2 February 1999 the Government notified the Registry that Mr F. Gölcüklü had been appointed *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mr J.-C. Geus, to take part in the proceedings before the Grand Chamber.

7. In accordance with the decision of the President, who had also given the applicant party's counsel leave to address the Court in Turkish (Rule 34 § 3), a hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1999.

There appeared before the Court:

(a) *for the Government*
Mr D. TEZCAN, *Agent*,
Mr M. ÖZMEN,
Mrs D. AKÇAY, *Co-Agents*,
Mr F. POLAT,
Mrs I. BATMAZ KEREMOĞLU,
Mrs G. ACAR,
Mrs M. KARALI, *Advisers*;

(b) *for the applicant party*
Mr H. KAPLAN, of the Istanbul Bar, *Counsel*;

(c) *for the Commission*
Mr J.-C. GEUS, *Delegate.*

The Court heard addresses by Mr Geus, Mr Kaplan and Mr Tezcan.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Formation of ÖZDEP

8. The Freedom and Democracy Party (ÖZDEP) was founded on 19 October 1992. Its constitution was lodged with the Ministry of the Interior the same day. Its programme included the following passages.

"... Following the war of 'Liberation' waged jointly by Kurds, Turks and other national minorities, the Sultanate was abolished in Turkey and the Republic proclaimed.

The sole aim of the Republic has been to establish national sovereignty. Efforts to unite Turkey with Europe have come to nothing. Turkey has not succeeded in lifting itself out of mediocrity.

From the earliest days of the Republic, certain parties have had a monopoly on power along with the collaboration of civil and military bureaucrats.

In order to preserve that monopoly, the policy of those in power has been to refuse to recognise the existence of the Kurdish people and to ignore its most legitimate rights.

The dominant 'Turkish' philosophy has been maintained up to the present day, overriding the most natural rights and claims of the Kurdish people, by means of militaristic and chauvinistic propaganda and a policy of exile and destruction. State policy, based on a capitalist system designed to oppress minorities – particularly Kurdish minorities, but even Turkish ones – has been pursued in the name of modernisation and westernisation.

Owing to this policy, which colours the political, economic and social aspects of Turkey's territorial integrity, there is no possibility of this monopoly of State power being brought to an end. That power runs counter to the interests of the vast majority of the population.

It uses force to impose the present situation on the people in order to preserve its economic interests. Thus, it blocks the way to any democratic process aimed at protecting the interests of Turkish and Kurdish workers.

The Freedom and Democracy Party proposes to create a system ruled by peace and fraternity in which our peoples will be entitled to self-determination.

The Freedom and Democracy Party uses political, democratic and ideological means to combat all fascist, fundamentalist, chauvinistic and racist movements or organisations hindering solidarity, unity and brotherhood between peoples.

Both in domestic and foreign policy, the aim of the Freedom and Democracy Party is to protect the interests of our peoples and those of all workers. ÖZDEP is the guarantor of the cultural, occupational, economic and political values of the various national or religious minorities and of every socio-professional category. It seeks recognition of the right to form a political party.

Our Party will guarantee the religious and national minorities the right to worship as they please, to practise their religion freely, to freedom of thought and to respect for their customs, cultures and languages. Every individual will be entitled to use the media, especially radio and television.

ÖZDEP has proposals on how to determine and define the prerequisites for establishing a social order encompassing the Turkish and Kurdish peoples.

ÖZDEP regards our peoples as the sole owners of the country's wealth, natural wealth and mineral resources.

ÖZDEP supports the just and legitimate struggle of the peoples for independence and freedom. It stands by them in this struggle.

Our Party proposes the creation of a democratic assembly of representatives of the people elected by universal suffrage. This assembly will represent the interests of the Turkish people, the Kurdish people and any other minority.

This popular and democratic assembly will have the same powers as the current legislature and will be the guarantor of our peoples' national sovereignty.

The media will be the moving force for the consolidation of fraternity and friendship between peoples. They will encourage a better approach to different cultures and languages and will guarantee the national identity of each sector of the population. They will be responsible for ensuring that the political, economic, social and cultural rights of the peoples are recognised.

There will be no government interference in religious affairs, which will be placed in the hands of the relevant institutions.

In order to preserve the right to self-determination of oppressed peoples, our Party will outlaw any form of cultural, military, political or economic aggression.

The Freedom and Democracy Party is campaigning for the voluntary unification of the Kurdish and Turkish peoples, who participated in the foundation of the country.

The Freedom and Democracy Party considers that there can be democracy only if the Kurdish problem is solved. This problem concerns every Turk and Kurd who supports freedom and democracy.

The Freedom and Democracy Party favours a peaceful and democratic solution to the Kurdish problem, subject to the strict application of international instruments such as the Helsinki Final Act, the European Convention on Human Rights and the Universal Declaration of Human Rights.

The Freedom and Democracy Party will fully respect the Kurdish people's right to self-determination so that a democratic solution based on the self-determination and equality of peoples can be found.

Currently, our legislation and the manner in which the legal system operates are inherently undemocratic, contrary to fundamental human rights and freedoms and based on class interests. They deny the Kurdish people an identity and forbid any form of workers' organisation or association. They are racist and retrograde.

An order will be established permitting the Turkish and Kurdish peoples and the minorities to develop and enjoy their particular cultures freely. Each people will be entitled to education in its mother tongue, that being an essential prerequisite for the development of a people and a nation.

Everyone will have the right to basic education in his mother tongue. The education system from primary school to university will be based on education in one's mother tongue. A person's mother tongue shall be given precedence in court proceedings ..."

B. The application to have ÖZDEP dissolved

9. On 29 January 1993, Principal State Counsel at the Court of Cassation ("Principal State Counsel") applied to the Turkish Constitutional Court to have ÖZDEP dissolved on the grounds that it had infringed the principles of the Constitution and the Law on the regulation of political parties. He considered that the content and aims set out in the party's programme sought to undermine the territorial integrity and secular nature of the State and the unity of the nation.

10. On 25 February 1993 the President of the Constitutional Court sent Principal State Counsel's application to the Chairman of ÖZDEP inviting him to lodge his preliminary observations in defence.

11. On 29 March 1993 ÖZDEP's lawyers filed preliminary written observations and requested a hearing. They argued, *inter alia*, that the Law on the regulation of political parties contained provisions that were contrary to the fundamental rights guaranteed by the Constitution. They also maintained that dissolving the party would infringe the provisions of international instruments such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Final Act and the Charter of Paris for a New Europe. They submitted that it was unacceptable to force a political party, on pain of being dissolved, to promote an ideology which conformed to the Turkish Constitution.

C. Dissolution of ÖZDEP

12. On 30 April 1993, while the Constitutional Court proceedings were still pending, a meeting of the founding members of ÖZDEP resolved to dissolve the party.

13. On 11 May 1993 Principal State Counsel lodged his submissions on the merits of the case with the Constitutional Court. Since ÖZDEP had gone into voluntary dissolution, it did not file any submissions on the merits.

14. On 14 July 1993 the Constitutional Court made an order dissolving ÖZDEP, notably on the ground that its programme was apt to undermine the territorial integrity of the State and the unity of the nation and violated both the Constitution and sections 78(a) and 81(a) and (b) of the Law on the regulation of political parties. The judgment was served on Principal State Counsel, the Speaker of the National Assembly and the Prime Minister's Office. The Constitutional Court's judgment was published in the Official Gazette on 14 February 1994.

The Constitutional Court held, firstly, that, pursuant to section 108 of the Law on the regulation of political parties, ÖZDEP's resolution to go into voluntary dissolution did not prevent that court from ruling on the merits of the case as it had been made after the commencement of the proceedings before it.

As to the merits, the Constitutional Court began by reiterating the constitutional principles that all persons living on Turkish territory, whatever their ethnic origin, formed a whole united by their common culture. The sum of the persons who made up the Republic of Turkey was called the "Turkish nation". The different ethnic groups making up the "Turkish nation" were not divided into a majority and minorities. The court reiterated that, under the Constitution, no political or legal distinction based on ethnic or racial origin could be made between citizens: all Turkish nationals, without distinction, could avail themselves of all civil, political and economic rights.

With particular reference to Turkish citizens of Kurdish origin, the Constitutional Court held that in every region of Turkey such persons enjoyed the same rights as other Turkish citizens. That did not mean that the Constitution denied the existence of a Kurdish identity, since citizens of Kurdish origin were not forbidden to express their Kurdish identity. The Kurdish language could be used on all private premises, in workplaces, in the press and in works of art and literature.

The Constitutional Court reiterated the principle that everyone was bound to observe the provisions of the Constitution even if they did not agree with them. The Constitution did not preclude the celebration of difference but forbade propaganda based on racial difference and aimed at destroying the constitutional order. It pointed out that by virtue of the Treaty of Lausanne having a separate language or ethnic origin was not by itself enough for a group to qualify as a minority.

With regard to the content of ÖZDEP's programme, the Constitutional Court observed that it was based on the assumption that there was a separate Kurdish people in Turkey with its own culture and language. The Kurds were portrayed in the programme as an oppressed people whose democratic rights were being completely ignored. According to the Constitutional Court, ÖZDEP called for a right to self-determination for the Kurds and supported their right to wage a "war of independence". Its stance was similar to that of terrorist organisations and constituted in itself an incitement to insurrection.

In relation to the principle of secularism, the Constitutional Court noted that ÖZDEP's programme contained a proposal for the abolition of the Religious Affairs Department of the government on the ground that religious affairs should be under the control of the religious institutions themselves. After reiterating what was meant by the principle of secularism, the court said that advocating the abolition of the government Religious

Affairs Department amounted to undermining the principle of secularism. It concluded that that aspect of ÖZDEP's programme was contrary to section 89 of the Law on the regulation of political parties.

The Constitutional Court pointed to the fact that the Charter of Paris for a New Europe condemned racism, ethnic hatred and terrorism and that the Helsinki Final Act guaranteed the inviolability of national frontiers and territorial integrity. It concluded that ÖZDEP's activities were subject, *inter alia*, to the restrictions referred to in paragraph 2 of Article 11 and to Article 17 of the Convention.

II. RELEVANT DOMESTIC LAW

A. The Constitution

15. The relevant provisions of the Constitution read as follows:

Article 2

"The Republic of Turkey is a democratic, secular and social State based on the rule of law, respectful of human rights in a spirit of social peace, national solidarity and justice, adhering to the nationalism of Atatürk and resting on the fundamental principles set out in the Preamble."

Article 3 § 1

"The State of Turkey constitutes with its territory and nation, an indivisible whole. The official language is Turkish."

Article 6

"Sovereignty resides unconditionally and unreservedly in the nation.

...

Sovereign power shall not under any circumstances be transferred to an individual, a group or a social class ..."

Article 10 § 1

"All individuals shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds."

Article 14 § 1

"None of the rights and freedoms referred to in the Constitution shall be exercised with a view to undermining the territorial integrity of the State and the unity of the nation, jeopardising the existence of the Turkish State or Republic, abolishing fundamental rights and freedoms, placing the control of the State in the hands of a single individual or group, ensuring the domination of one social class over other social classes, introducing discrimination on the grounds of language, race, religion or membership of a religious sect, or establishing by any other means a political system based on any of the above concepts and opinions."

Article 66 § 1

"Everyone linked to the Turkish State by nationality shall be Turkish."

(Former) Article 68

"Citizens shall have the right to form political parties and to join them or withdraw from them in accordance with the lawful procedure laid down for the purpose ...

Political parties shall be an indispensable part of the democratic political system.

Political parties may be formed without prior permission and shall carry on their activities in accordance with the Constitution and the law.

The constitutions and programmes of political parties shall not be inconsistent with the absolute integrity of State territory and of the nation, human rights, national sovereignty or the principles of a democratic secular Republic.

No political party shall be formed which aims to advocate or establish the domination of one social class or group, or any form of dictatorship ..."

(Former) Article 69

"Political parties shall not engage in activities other than those referred to in their constitutions and programmes, nor shall they disregard the restrictions laid down by Article 14 of the Constitution, on pain of permanent dissolution.

...

The decisions and internal running of political parties shall not be contrary to democratic principles.

...

Immediately a political party is formed, Principal State Counsel shall verify as a matter of priority that its constitution and programme and the legal position of its founding members are consistent with the Constitution and the laws of the land. He shall also monitor its activities.

Political parties may be dissolved by the Constitutional Court, on application by Principal State Counsel.

Founding members and managers, at whatever level, of political parties which have been permanently dissolved may not become founding members, managers or financial controllers of any new political party, nor shall a new party be formed if a majority of its members previously belonged to a party which has been dissolved ..."

B. Law no. 2820 on the regulation of political parties

16. The relevant provisions of Law no. 2820 on the regulation of political parties read as follows:

Section 78

"Political parties

(a) shall not aim or strive to or incite third parties to

change: the republican form of the Turkish State; the ... provisions concerning the absolute integrity of the Turkish State's territory, the absolute unity of its nation, its official language, its flag or its national anthem; ... the principle that sovereignty resides unconditionally and unreservedly in the Turkish nation; ... the provision that sovereign power cannot be transferred to an individual, a group or a social class ...;

jeopardise the existence of the Turkish State and Republic, abolish fundamental rights and freedoms, introduce discrimination on grounds of language, race, colour, religion or membership of a religious sect, or establish, by any means, a system of government based on any such notion or concept.

...

(c) shall not aim to defend or establish the domination of one social class over the other social classes or the domination of a community or the setting up of any form of dictatorship; they shall not carry on activities in pursuit of such aims ..."

Section 80

"Political parties shall not aim to change the principle of the unitary State on which the Turkish Republic is founded, nor carry on activities in pursuit of such an aim."

Section 81

"Political parties shall not

(a) assert that there exist within the territory of the Turkish Republic any national minorities based on differences relating to national or religious culture, membership of a religious sect, race or language; or

(b) aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating a non-Turkish language or culture, to create minorities on the territory of the Turkish Republic or to engage in similar activities ..."

Section 89

"Political parties shall not have an aim that runs counter to Article 136 of the Constitution, which provides that the Religious Affairs Department, which is bound to carry out the duties assigned to it in conformity with the principle of secularism ..., shall be accountable to central Government."

Section 90(1)

"The constitution, programme and activities of political parties shall not contravene the Constitution or this Law."

Section 95

"Where a political party has been definitively dissolved, its founding members, its chairman, the members of its executive committee and central office, the members of its disciplinary and administrative organs at all levels and the members of political groups in the Grand National Assembly of Turkey shall, if still members when the party was dissolved, be disqualified from acting as founders, managers or financial controllers of any other political party. Any members whose actions were responsible for the political party's being dissolved shall be disqualified for ten years from joining a political party or standing for election to Parliament.

No political party shall be formed with a majority of members from a political party that has been dissolved."

Section 96(3)

"No political party shall be formed with the name 'communist', 'anarchist', 'fascist', 'theocratic' or 'national socialist', the name of a religion, language, race, sect or region, or a name including any of the above words or similar ones."

Section 101

"The Constitutional Court shall dissolve a political party where

(a) the party's programme or constitution ... is contrary to the provisions of Chapter 4 of this Law; or

(b) its membership, central office or executive committee ... take a decision, issue a circular or make a statement ... contrary to the provisions of Chapter 4 of this Law or the Chairman, Vice-Chairman or General Secretary makes any written or oral statement contrary to those provisions ..."

Chapter 4 of the Law, referred to in section 101, includes in particular sections 90(1) and 96(3), which are reproduced above.

Section 107(1)

"All the assets of political parties dissolved by order of the Constitutional Court shall be transferred to the Treasury."

Section 108

"A resolution by the competent body of a political party dissolving that party after an application for its dissolution has been lodged shall not prevent the proceedings before the Constitutional Court continuing or deprive any dissolution order that is made of its legal effects."

PROCEEDINGS BEFORE THE COMMISSION

17. ÖZDEP applied to the Commission on 21 March 1994. It alleged a violation of Articles 9, 10, 11 and 14 of the Convention.

18. The Commission declared the application (no. 23885/94) admissible on 2 September 1996. In its report of 12 March 1998 (former Article 31 of the Convention), it expressed the opinion, by twenty-nine votes to one, that there had been a violation of Article 11, that no separate issue arose under Articles 9 or 10 and that it was unnecessary to examine separately whether there had been a violation of Article 14. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

19. In their memorial the Government requested the Court to hold that:

"(1) the ÖZDEP party cannot assert that it is a victim since a meeting of ÖZDEP's founding members had passed a resolution on 30 April 1993 for the dissolution of the party before the Constitutional Court delivered its decision on 14 July 1993;

(2) ÖZDEP's winding up was necessary in a democratic society and proportionate to the legitimate aim which that democratic society sought to pursue since it had violated the territorial integrity of the State by all possible means, whether legal or illegal; consequently, there had been no violation of Article 11 of the Convention;

(3) there had been no violation of Articles 9, 10 or 14 of the Convention on Human Rights in the instant case as the interference had been lawful under Article 11 § 2 of the Convention;

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1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

(4) Article [41] of the Convention did not apply as there had been no violation of the Articles relied on by the applicant party."

20. The applicant party invited the Court to hold that there had been a violation of Articles 9, 10, 11 and 14 of the Convention and to award it just satisfaction under Article 41.

TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

21. The representative of the Freedom and Democracy Party (ÖZDEP) maintained that the fact that it had been dissolved and its leaders banned from holding similar office in any other political party had infringed their right to freedom of association, as guaranteed by Article 11 of the Convention, which provides:

"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."

A. The Government's preliminary objection

22. The Government maintained before the Court that ÖZDEP could not be regarded as a victim of the dissolution complained of as it had been dissolved voluntarily on 30 April 1993, well before 14 July 1993 when the Constitutional Court had ordered its dissolution. The Constitutional Court had made that order, notwithstanding the voluntary dissolution, to prevent the party leadership from forming a new party with the same name and status. Had ÖZDEP's leaders lodged their application before the Court in their own name, too, then they could have claimed to have been victims of the dissolution; but they had not done so.

23. At the hearing before the Court, the Delegate of the Commission said that in his view the Government were estopped from raising their objection because they had not done so at the admissibility stage of the proceedings before the Commission and the Commission had not found any

ground for declaring the application inadmissible of its own motion. Exceptionally, however, the Commission had considered it appropriate to consider of its own motion the issue of ÖZDEP's standing in its report made under former Article 31 of the Convention. Nonetheless, that did not prevent the estoppel arising against the Government owing to their failure to raise the objection before the Commission.

24. The applicant party contended that the Government were estopped from raising the objection for the first time before the Court. It invited the Court to accept that it was a victim since the sole purpose of dissolving the party voluntarily had been to allow its leaders to escape the effects of a dissolution by the Constitutional Court.

25. The Court notes that the Government did not raise before the Commission the preliminary objection they have now made under Article 34 of the Convention that ÖZDEP did not have standing as a victim. Consequently, an estoppel should arise against them (see, among other authorities, the Zana v. Turkey judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2546, § 44). In its report, however, the Commission examined that issue of its own motion. If an estoppel was nonetheless held to arise against the Government, they would be deprived of an opportunity to make representations on a point that was considered by the Commission of its own motion and was the subject of argument before the Court. That appears inconsistent with the principles of adversarial procedure and equality of arms. Consequently, the Government must be permitted to raise the objection concerned even though it was made out of time.

26. As to the merits of the objection, the Court accepts that ÖZDEP's leaders resolved to dissolve their party in the hope of avoiding certain effects of a dissolution by the Constitutional Court, in their case a ban on their holding any similar office in any other political body (see section 95 of the Law on the regulation of political parties – paragraph 16 above). That explanation is supported by section 108 of the Law on the regulation of political parties which, by providing that voluntarily dissolved political parties continue to exist for the purposes of dissolution by the Constitutional Court, is intended to ensure that they are subject to all the effects of the latter form of dissolution (see paragraph 16 above). Thus the decision of ÖZDEP's leaders to dissolve the party was not made freely, as the decisions of leaders and members of associations should be if they are to be recognised under Article 11.

In addition, as the Court has already noted, section 108 of the Law on the regulation of political parties provides "[a] resolution by the competent body of a political party dissolving that party after an application for its dissolution has been lodged shall not prevent the proceedings before the Constitutional Court continuing or deprive any dissolution order that is made of its legal effects". It therefore follows that as domestic law provides

that a voluntarily dissolved political party remains in existence for the purposes of dissolution by the Constitutional Court, the Government cannot contend before the Court that ÖZDEP was no longer in existence when the dissolution order was made (see, *mutatis mutandis*, the Kolompar v. Belgium judgment of 24 September 1992, Series A no. 235-C, p. 54, § 32, and the Open Door and Dublin Well Woman v. Ireland judgment of 29 October 1992, Series A no. 246-A, p. 22, § 42).

Consequently, the Government's preliminary objection must be dismissed.

B. Merits of the complaint

1. Whether there has been an interference

27. All of those appearing before the Court accepted that ÖZDEP's dissolution amounted to an interference with the freedom of association of its members. The Court takes the same view.

2. Whether the interference was justified

28. Such an interference will constitute a breach of Article 11 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims.

(a) "Prescribed by law"

29. It was common ground that the interference was "prescribed by law", as the measures ordered by the Constitutional Court were based on the Constitution and sections 78, 81 and 89 of Law no. 2820 on the regulation of political parties (see paragraphs 15-16 above).

(b) Legitimate aim

30. The Government maintained that the interference pursued a number of legitimate aims: preventing disorder, protecting the rights of others and ensuring national security, including the territorial integrity of the country.

31. The applicant party denied that it had ever been a threat to Turkish society.

32. The Commission considered that the impugned measures could be regarded as having pursued at least one of the legitimate aims set out in paragraph 2 of Article 11: the protection of territorial integrity and thus the preservation of "national security".

33. The Court shares the Commission's view on this point.

(c) "Necessary in a democratic society"

(i) The submissions of those appearing before the Court

(α) The applicant party

34. The applicant party submitted that it had been clearly stated in its programme that it favoured a democratic and peaceful solution to the Kurdish problem and one complying with international law. It was wrong to suggest that the party sought the partition of Turkey. On the contrary, ÖZDEP's programme had stressed the need for the country to remain unified, as it said that the party wished to work for the unity of the Turkish and Kurdish peoples, who together would form the country on the basis of equality and voluntarism. Nothing in ÖZDEP's programme or activities expressed a separatist aim, as indeed was confirmed by the fact that so far no prosecution had been brought against the parties' leaders under Article 125 of the Criminal Code, which made it an offence to engage in separatist activities.

The Kurdish problem was currently the most serious problem facing Turkey. Given the scale of that problem, political parties were not only able to seek out and propose solutions, they had a duty to do so. However, in the eyes of the authorities, the mere fact that a party had used the word "Kurd" was enough to justify its dissolution. That was what had happened to ÖZDEP: both Principal State Counsel and the Constitutional Court had based their accusations on the use of the words "Kurd", "Kurdish people", "minority" and "peoples" in the party's programme. Yet the programme did not describe the Kurds as a minority or contain a call for them to receive special treatment or to be separated from the Turkish population. Furthermore, there was not a single sentence in the programme that did not reflect the party's true intentions. Thus, banning a political party solely because it had announced in its programme that it intended to press for a just, democratic and peaceful solution to the Kurdish problem amounted to a breach of Article 11 of the Convention.

(β) The Government

35. The Government submitted that the objectives contained in ÖZDEP's programme were apt to incite part of the Turkish population to revolt or to engage in illegal activities such as devising a new political order and laws that would have been incompatible with the constitutional principles of the Turkish State.

ÖZDEP was thus using democratic freedoms in an attempt to divide Turkey by choosing as its fundamental theme an alleged oppression by the Turkish State of minorities and, more particularly, of the Kurds. After referring to the right of peoples to self-determination, ÖZDEP had openly

supported the armed struggle in its programme, notably by declaring: "ÖZDEP supports the just and legitimate struggle of the peoples for independence and freedom. It stands by them in this struggle." Such ideas amounted to approval of the illegal activities of terrorist organisations whose aim was to destroy the unity of the State and to incite part of the Turkish population to revolt.

Furthermore, in its programme, ÖZDEP advocated self-determination for the population of Kurdish origin; self-determination was not only unconstitutional but also ineligible for protection under the Convention as it undermined the integrity of the Turkish nation and the indivisibility of the territory of the State.

Moreover, the instant case differed from the cases concerning the United Communist Party of Turkey (judgment of 30 January 1998, *Reports* 1998-I, p. 1) and the Socialist Party (judgment of 25 May 1998, *Reports* 1998-III, p. 1233) as ÖZDEP's aim, unlike that of those parties, had not been to abide by the rules of democratic debate but instead to divide the country by, on the one hand, drawing on the support of part of the population and, on the other, applauding the battle being fought by terrorist organisations.

Propaganda in favour of self-determination for part of the population, in this case people of Kurdish origin, was not only contrary to the Turkish Constitution, but also liable to cause unrest among the Turkish population. In a country such as Turkey, which since its creation has been based on a unitary structure and where, by virtue of Article 10 of the Constitution, "[a]ll individuals shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds", such propaganda would inevitably provoke grave discord between the various sectors of the Turkish population.

In sum, regard being had to the background to the present case and in particular to the difficulties to which the fight against terrorism gave rise, it was possible to conclude on the basis of the evidence relied on by the Constitutional Court that ÖZDEP bore some responsibility for the problems caused by terrorism in Turkey. The party's dissolution did not appear to have been a disproportionate measure and, accordingly, could not have amounted to a violation of Article 11 of the Convention.

(γ) The Commission

36. The Commission expressed the opinion that there had been a violation of Article 11. It observed, firstly, that ÖZDEP's constitution demonstrated that the party was democratic in structure. It had sought to attain its political objectives by purely lawful means. Indeed, Principal State Counsel had not argued the contrary in the Constitutional Court. Further, it had not been shown that ÖZDEP had intended to destroy the democratic

and pluralist system in Turkey or had encouraged a breach of fundamental human rights in the form of racial discrimination.

Moreover, the section of ÖZDEP's programme dealing with the situation of Turkish citizens of Kurdish origin did not contain any proposal for the use of violence or other anti-democratic or unconstitutional means. On the contrary, the programme suggested exclusively democratic and political solutions to the problems posed. Nor did it contain any encouragement to extremist or terrorist groups to destroy the constitutional order of the State or to found a Kurdish State by the use of force.

(ii) The Court's assessment

37. The Court reiterates that notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy.

As the Court has said many times, there can be no democracy without pluralism. It is for that reason that freedom of expression as enshrined in Article 10 is applicable, subject to paragraph 2, not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. The fact that their activities form part of a collective exercise of freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention (see, among other authorities, the United Communist Party of Turkey and Others judgment cited above, pp. 20-21, §§ 42-43).

38. In the instant case, it must firstly be noted that in its judgment of 14 July 1993, the reasons given by the Constitutional Court for ordering ÖZDEP's dissolution were that the party's programme tended to undermine the territorial integrity of the State and the unity of the nation, while violating the Constitution and sections 78(a) and 81(a) and (b) of the Law on the regulation of political parties. In the Constitutional Court's view, the programme was based on the assumption that there was a separate Kurdish people in Turkey with its own culture and language. The Kurds were presented in the programme as an oppressed people whose democratic rights were being completely ignored. ÖZDEP had called for a right to self-determination for the Kurds and supported their right to wage a "war of independence". Its stance was similar to that of terrorist organisations and constituted in itself an incitement to insurrection. That justified making an order for its dissolution (see paragraph 14 above).

In addition, the Constitutional Court found that, by advocating the abolition of the government Religious Affairs Department in its programme

(on the ground that religious affairs should be under the control of the religious institutions themselves), ÖZDEP had undermined the principle of secularism. The Constitutional Court therefore held that there had been a breach of section 89 of the Law on the regulation of political parties.

39. In the light of these factors, the Court must consider the content of the passages in issue and determine whether it justified ÖZDEP's dissolution.

With regard to the first issue the Court reiterates that when it carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. In so doing, the Court has in particular to satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts (see, *mutatis mutandis*, the Socialist Party and Others judgment cited above, p. 1256, § 44).

40. Having analysed ÖZDEP's programme, the Court finds nothing in it that can be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. That, in the Court's view is an essential factor to be taken into consideration (see, *mutatis mutandis*, *Okçuoğlu v. Turkey* [GC], no. 24246/94, § 48, 8 July 1999, unreported). On the contrary, the need to abide by democratic rules when implementing the proposed political project was stressed in the programme. Among other things, it says that ÖZDEP "proposes the creation of a democratic assembly of representatives of the people elected by universal suffrage" and "favours a peaceful and democratic solution to the Kurdish problem, subject to the strict application of international instruments such as the Helsinki Final Act, the European Convention on Human Rights and the Universal Declaration of Human Rights" (see paragraph 8 above).

According to the Government, however, ÖZDEP "openly supported the armed struggle by declaring in a statement leaving no room for doubt that 'ÖZDEP supports the just and legitimate struggle of the peoples for independence and freedom. It stands by them in this struggle'".

While the Court considers that that phrase did represent a statement of intent by ÖZDEP to make certain political demands, it finds nothing in it that would incite people to use violence or break the rules of democracy. In that respect, the passage concerned is virtually indistinguishable from passages to be found in the programmes of certain bodies that are politically active in other member States of the Council of Europe.

41. The Constitutional Court also criticised ÖZDEP for having distinguished two nations in its programme – the Kurds and the Turks – and for having referred to the existence of minorities and to their right to self-determination, to the detriment of the unity of the Turkish nation and the territorial integrity of the Turkish State.

The Court notes that, taken together, the passages in issue present a political project whose aim is in essence the establishment – in accordance

with democratic rules – of "a social order encompassing the Turkish and Kurdish peoples". It is stated elsewhere in the programme that "[t]he Freedom and Democracy Party is campaigning for the voluntary unification of the Kurdish and Turkish peoples, who participated in the foundation of the country". It is true that in its programme ÖZDEP also refers to the right to self-determination of the "national or religious minorities"; however, taken in context, those words do not encourage people to seek separation from Turkey but are intended instead to emphasise that the proposed political project must be underpinned by the freely given, democratically expressed, consent of the Kurds.

In the Court's view, the fact that such a political project is considered incompatible with the current principles and structures of the Turkish State does not mean that it infringes democratic rules. It is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself (see the Socialist Party and Others judgment cited above, p. 1257, § 47). The same applies, too, to ÖZDEP's proposals for the abolition of the Religious Affairs Department.

42. Admittedly, it cannot be ruled out that the passages concerned may conceal a different political design from the publicly proclaimed one. However, given the absence of any concrete acts suggesting otherwise, there is no reason to cast doubts on the genuineness of ÖZDEP's programme. ÖZDEP was therefore penalised solely for exercising its freedom of expression.

43. The Court must now determine whether, in the light of the above considerations, ÖZDEP's dissolution can be considered to have been necessary in a democratic society, that is to say whether it met a "pressing social need" and was "proportionate to the legitimate aim pursued" (see the Socialist Party and Others judgment cited above, p. 1258, § 49).

44. In view of the essential role played by political parties in the proper functioning of democracy (see the United Communist Party of Turkey and Others judgment cited above, p. 17, § 25), the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (ibid., p. 22, § 46).

Further, the Court has previously held that one of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned (see the Socialist Party and Others judgment cited above, p. 1256, § 45).

45. In the instant case, the Court notes that the interference in issue was radical: ÖZDEP was definitively dissolved with immediate effect, its assets were liquidated and transferred *ipso jure* to the Treasury and its leaders were banned from carrying on certain similar political activities. Such drastic measures may be taken only in the most serious cases.

46. The Court has already noted that the relevant passages in ÖZDEP's programme, though voicing criticism and demands, do not in its view call into question the need to comply with the principles and rules of democracy.

The Court takes into account the background of cases before it, in particular the difficulties associated with the fight against terrorism (see, among other authorities, the United Communist Party of Turkey and Others

judgment cited above, p. 27, § 59). In that connection, the Government have affirmed that ÖZDEP bears a share of the responsibility for the problems caused by terrorism in Turkey (see paragraph 35 above). The Government nonetheless fail to explain how that could be so as ÖZDEP scarcely had time to take any significant action. It was formed on 19 October 1992, the first application for it to be dissolved was made on 29 January 1993 and it was dissolved, initially at a meeting of its founding members on 30 April 1993 and then by the Constitutional Court on 14 July 1993. Any danger there may have been could have come only from ÖZDEP's programme, but there, too, the Government have not established in any convincing manner how, despite their declared attachment to democracy and peaceful solutions, the passages in issue in ÖZDEP's programme could be regarded as having exacerbated terrorism in Turkey.

47. In view of the findings referred to above, there is no call either for Article 17 to come into play, as nothing in the passages concerned warrants the conclusion that their author relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it (see, *mutatis mutandis*, the Socialist Party and Others judgment cited above, p. 1259, § 53).

48. In conclusion, ÖZDEP's dissolution was disproportionate to the aim pursued and consequently unnecessary in a democratic society. It follows that there has been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 9, 10 AND 14 OF THE CONVENTION

49. The applicant party also alleged a violation of Articles 9, 10 and 14 of the Convention. As its complaints relate to the same matters as those considered under Article 11, the Court does not consider it necessary to examine them separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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. Pecuniary damage

51. ÖZDEP claimed 500,000 French francs (FRF) for pecuniary damage. That sum represented the total costs of forming the party, renting premises, travel and accommodation for party members in connection with its formation, setting up its structures in forty provinces with a view in particular to taking part in the elections, and printing and distributing brochures.

52. The Government maintained that ÖZDEP's claims for just satisfaction were both exorbitant and entirely unsubstantiated. They contended that any finding by the Court of a violation would constitute sufficient just satisfaction. As to the alleged pecuniary damage, there was no causal link between it and the facts of the case.

53. The Delegate of the Commission considered that there was no reason for the Court to reach a different conclusion from that reached in the cases of the United Communist Party and the Socialist Party cited above.

54. The Court notes that the applicant party has not furnished any evidence in support of its claim. Consequently, it is unable to accept it (Rule 60 § 2 of the Rules of Court; see, *mutatis mutandis*, the Socialist Party and Others judgment cited above, p. 1261, § 67).

B. Non-pecuniary damage

55. ÖZDEP also claimed FRF 200,000 as compensation for the non-pecuniary damage caused by its dissolution.

56. The Government considered that sum exorbitant, too. In the event that there was found to have been a violation, that should suffice to redress any non-pecuniary damage.

57. In the Court's view, ÖZDEP's dissolution must have been highly frustrating for its founders and members. The Court assesses at FRF 30,000 the sum to be paid to Mr Mevlüt İlik, ÖZDEP's representative for the purposes of the proceedings before the Court (see paragraph 1 above), as compensation for the non-pecuniary damage sustained by the founders and members of the applicant party.

C. Costs and expenses

58. ÖZDEP sought FRF 200,000 for costs and expenses, being FRF 120,000 for the fees charged by its counsel for representing it before

the Constitutional Court and in Strasbourg and FRF 80,000 for translation, communications and travel expenses connected therewith.

59. The Government argued, firstly, that the costs of ÖZDEP's representation before the Constitutional Court could not be relevant here as it was unconnected with the proceedings before the Strasbourg institutions. In addition, since there was no accurate, detailed statement of account, it was impossible to verify whether the documents produced by ÖZDEP's lawyer in support of its claim for reimbursement of the costs and expenses related to the present proceedings. Lastly, the fees claimed were out of all proportion with those generally paid in similar cases in Turkey. The present case was a relatively straightforward one that had not required much time or work. In any event, just satisfaction should reflect the social and economic conditions of the country concerned and not constitute a source of unjust enrichment for the applicant.

60. The Court reiterates that in order for costs to be recoverable under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In that connection, it should be noted that if the Court finds that there has been a violation of the Convention, it may award the applicant not only the costs and expenses incurred before the Convention institutions, but also those incurred in the national courts for the prevention or redress of the violation (see, among other authorities, *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 45, ECHR 1999-I).

In the present case, the costs relating to ÖZDEP's representation before the Constitutional Court were incurred with a view to avoiding the party's dissolution. It is that dissolution that led to the above finding of a violation (see paragraph 48 above). Consequently, the dissolution proceedings are relevant to the determination of just satisfaction.

The Court notes, however, that ÖZDEP has not provided details of the number of hours' work for which its lawyer claims payment. Pursuant to Rule 60 § 2 it cannot grant the amount claimed. Making its assessment on an equitable basis, it awards FRF 40,000 to be paid to Mr Mevlüt İlik, for costs and expenses.

D. Default interest

61. The Court deems it appropriate to adopt the statutory rate of interest applicable in France at the date of adoption of the present judgment, which is 3.47% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that it is unnecessary to consider whether there has been a violation of Articles 9, 10 or 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay Mr Mevlüt İlik, the representative of the applicant party in the proceedings before the Court, within three months, by way of just satisfaction, 30,000 (thirty thousand) French francs for non-pecuniary damage and 40,000 (forty thousand) French francs for costs and expenses, to be converted into Turkish liras at the rate applicable on the date of settlement;
   (b) that simple interest shall be payable on the above sums at an annual rate of 3.47% from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 8 December 1999.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar