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

FOURTH SECTION

CASE OF YAZAR AND OTHERS v. TURKEY

(Applications nos. 22723/93, 22724/93 and 22725/93)

JUDGMENT

STRASBOURG

9 April 2002

FINAL

09/07/2002

In the case of Yazar and Others v. Turkey,

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

Mr M. PELLONPÄÄ, *President*,
Mr A. PASTOR RIDRUEJO,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 12 March 2002,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the European Commission of Human Rights ("the Commission") on 3 June 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. It originated in three applications (nos. 22723/93, 22724/93 and 22725/93) against the Republic of Turkey lodged with the Commission under former Article 25 of the Convention by three Turkish nationals, Mr Feridun Yazar, Mr Ahmet Karataş and Mr İbrahim Aksoy, and the People's Labour Party (Halkın Emeği Partisi – "the HEP") ("the applicants"), on 24 September 1993.

3. The applicants alleged, in particular, that the dissolution of the HEP had infringed their right to freedom of association, freedom of thought and freedom of expression, that they had been discriminated against on account of the political opinions supported by the HEP, and that the Constitutional Court had not given them a public hearing.

4. The Commission declared the applications admissible on 3 April 1995. In its report of 1 March 1999 (former Article 31 of the Convention) [*Note by the Registry*. The Commission's report is obtainable from the Registry] it unanimously expressed the opinion that there had been a violation of Article 11 of the Convention, that no separate issue arose under Articles 9 and 10 and that it was not necessary to examine separately whether there had been a violation of Article 14. It also expressed the opinion by twenty-two votes to four that there had been no violation of Article 6 § 1 of the Convention.

5. Mr Feridun Yazar and Mr İbrahim Aksoy were represented by Mr H. Kaplan, of the Istanbul Bar. Mr Ahmet Karataş was represented by Mr Y. Alataş, of the Ankara Bar.

6. On 7 July 1999 a panel of the Grand Chamber decided that the case should be examined by a Chamber (Rule 100 § 1 of the Rules of Court). The Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Turkish Government ("the Government") accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

7. The applicants and the Government each filed a memorial.

8. Having consulted the Agent of the Government and the applicants, the Chamber decided that it was not necessary to hold a hearing (Rule 59 § 2 *in fine*). On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. At the material time the first applicant, Feridun Yazar, was chairman of the People's Labour Party (Halkın Emeği Partisi – "the HEP"), the second applicant, Ahmet Karataş, was its vice-chairman and the third applicant, İbrahim Aksoy, was its general secretary.

10. On 7 June 1990 the HEP was founded and its constitution was filed with the Ministry of the Interior.

11. On 3 July 1992 Principal State Counsel at the Court of Cassation applied to the Turkish Constitutional Court to have the HEP dissolved. In his application he accused the party of having undermined the integrity of the State. He submitted that certain statements made at meetings and to the press by the party's leaders and senior officials at both central and local level had infringed the Constitution and the Law on the regulation of political parties. He also accused the HEP of assisting and protecting those of its members who had committed illegal acts.

12. On 8 July 1992 the President of the Constitutional Court sent Principal State Counsel's application to the chairman of the HEP, inviting him to submit his preliminary observations in reply.

13. On 3 September 1992 the HEP's lawyer filed his preliminary written observations and requested a hearing. In his observations he submitted, in

particular, that the Law on the regulation of political parties contained provisions that were contrary to the fundamental rights guaranteed by the Constitution. He also maintained that the dissolution of the party, as called for by Principal State Counsel, would contravene international instruments such as the European Convention on Human Rights, the United Nations International Covenant on Civil and Political Rights, the Helsinki Final Act and the Charter of Paris for a New Europe. In addition, he argued that there was insufficient evidence of the links between the HEP and the PKK (Workers' Party of Kurdistan). He further contended that Principal State Counsel's application referred to statements made by individuals, for which the HEP could not be held liable, pursuant to section 101(b) of the Law on the regulation of political parties.

14. On 22 January 1993 the HEP's lawyer submitted his observations on the merits. He again requested a hearing. He also sought leave, should that request be refused, for the HEP's chairman and his predecessors to give evidence to the Constitutional Court.

15. The Constitutional Court acceded to the latter request. Accordingly, the former chairman and the chairman of the HEP made oral submissions to the court on 1 March 1993.

16. On 14 July 1993 the Constitutional Court decided to dissolve the HEP. Its judgment was served on Principal State Counsel, the Speaker of the National Assembly and the Prime Minister's Office.

17. The Constitutional Court's judgment was published in the Official Gazette on 18 August 1993.

18. In its judgment the Constitutional Court began by reiterating the main constitutional principles of relevance to the case, to the effect that all persons living within Turkish territory, whatever their ethnic origin, formed a whole united by their common culture. Accordingly, the sum of the persons who made up the Republic of Turkey was called the “Turkish nation”. The different ethnic groups making up the “nation” were therefore not divided into a majority or minorities. The Constitutional Court pointed out that, under the Constitution, no political or legal distinction based on ethnic or racial origin could be made between citizens. All Turkish nationals could avail themselves of all civil, political and economic rights without discrimination.

19. With particular reference to Turkish citizens of Kurdish origin, the Constitutional Court held that in every region of Turkey these enjoyed the same rights as other Turkish citizens. That did not mean, it added, that the Constitution did not acknowledge 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, at places of work, in the press and in works of art and literature.

20. The Constitutional Court reiterated the principle that all people were 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 that was based on racial difference and was aimed at destroying the constitutional order. The Constitutional Court pointed out that under the Treaty of Lausanne, having a separate language or ethnic origin was not in itself sufficient for a group to qualify as a minority.

21. With regard to the HEP's activities, the Constitutional Court examined, in particular, the written and oral statements made at public and private meetings by the party's leaders and by other officials at various levels. It also considered the content of calendars on sale to the public and slogans shouted at various meetings held on the HEP's premises.

22. The Constitutional Court was particularly critical of the HEP for "seeking to divide the Turkish nation in two, with Turks on one side and Kurds on the other, with the aim of establishing separate States" and for "seeking to destroy national and territorial integrity". It considered in that connection that the HEP was asserting through its activities that there was a separate Kurdish people with its own culture and language, which the Kurds were not free to practise. The HEP demanded the right to self-determination for the Kurds, advocated the setting up of "Kurdish provinces" and described the terrorist acts committed by the PKK as acts of international war. It regarded PKK terrorists as freedom fighters and claimed that instead of combating them, the security forces were in fact seeking to bring about the mass extermination of the Kurdish people. In all its activities, in which the sole emphasis was on equality between Turks and Kurds, the HEP was calling for the establishment of a State built on racist foundations, thereby jeopardising the concept of the "Turkish nation", one of the principles on which the State had been founded. In the Constitutional Court's view, "the HEP's aims resembled those of terrorists" and "the use of accusatory and aggressive statements based on falsehoods, which the HEP's leaders constantly repeated as a form of provocation, was likely to promote tolerance of terrorist acts and to justify and encourage their perpetrators".

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

24. The Constitutional Court accordingly ordered the dissolution of the HEP on the ground that its activities were such as to undermine the territorial integrity of the State and the unity of the nation.

25. However, the Constitutional Court dismissed Principal State Counsel's second argument that the HEP implicitly or explicitly tolerated the illegal actions of its members. In that connection, it took into account

the fact that the various criminal proceedings instituted against members of the HEP were still pending and that none of its members had yet been found guilty.

II. VIEWS SUPPORTED BY THE HEP LEADERS, AS SET OUT BY THE TURKISH CONSTITUTIONAL COURT IN ITS JUDGMENT OF 14 JULY 1993

26. The main ideas put forward in the HEP leaders' speeches, explanations and statements, as outlined in the Turkish Constitutional Court's judgment, may be summarised as follows.

(a) There is a Kurdish people in Turkey which has its own language and culture and is oppressed.

(b) The Kurds are not allowed to read or write in Kurdish or improve their knowledge of the language and are unable to develop their culture.

(c) The Kurds are fighting for freedom and democracy. A parallel is drawn with the legend of Kawa, who had revolted against the oppressive King Dehhak 2,600 years ago; it is asserted that more and more people are emulating Kawa.

(d) The Kurdish people have the right to self-determination.

(e) The Kurdish people cannot avail themselves of any rights arising from international agreements.

(f) The problems in eastern Turkey are not of an economic nature.

(g) The statutory measures taken against organised terrorism constitute an international war, and the armed organisation (the PKK) is one of the belligerents.

(h) The armed militants belonging to that organisation are freedom fighters. It is therefore natural that the international laws of war should be applied to them, but the Turkish government has not put that into practice.

(i) The Turkish army and the security forces pursue the aim of physically destroying the Kurdish masses from which the Kurdish militants are drawn rather than fighting them.

(j) Since the break-up of the USSR, the course of history has caused Turkish citizens of Kurdish origin to take an interest in that phenomenon, and a parallel has consequently been drawn with the situation of the Palestinian people.

(k) The Republic has been founded by the Turkish and Kurdish peoples. Turks and Kurds should establish a social system based on equality between the two ethnic groups, without taking any others into account.

(l) The government forces stationed in south-eastern Turkey have been deployed not against the terrorists but against the Kurdish people and have appropriated their national rights.

(m) The HEP is also the party of the oppressed Kurds, the workers, other oppressed and exploited ethnic groups, the Arabs, the Circassians, the Laz and the Albanians.

(n) The United Nations should hold a conference on the Kurdish question as soon as possible.

(o) The Kurdish problem is the biggest obstacle to democracy. Until it is solved, democracy cannot be developed in Turkey.

III. RELEVANT DOMESTIC LAW

A. The Constitution

27. At the material time 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 shall constitute with its territory and nation an indivisible whole. The official language shall be Turkish."

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 State political system based on such concepts and opinions."

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, rule books and activities of political parties shall not be incompatible with the independence of the State, the integrity of State territory and of the nation, human rights, the principles of equality and the rule of law, national sovereignty or the principles of a democratic, secular Republic. No political party may be founded with the aim of advocating and establishing the domination of one social class or group, or a dictatorship in any form whatsoever. ..."

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.

The Constitutional Court shall give a final ruling on the dissolution of political parties on an application by Principal State Counsel at the Court of Cassation.

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 (promulgated on 24 April 1983)

28. At the material time the relevant provisions of Law no. 2820 read as follows.

Section 78

"Political parties

... shall not aim or strive to or incite third parties to

– change ... the legal provisions concerning the absolute integrity of the Turkish State's territory, the absolute unity of its nation, its official language ...

– 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. Political parties may not incite third parties to act in pursuit of those 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 84

"Forfeiture of the status of member

Where the Council of the Presidency of the Grand National Assembly has validated the resignation of members of parliament, the loss of their status as members shall be decided by the Grand National Assembly in plenary session.

A convicted member of parliament shall not forfeit the status of member until the court which convicted him has notified the plenary Assembly of the final judgment.

A member of parliament who continues to hold an office or carry on an activity incompatible with the status of member, within the meaning of section 82, shall forfeit that status after a secret ballot of the plenary Assembly held in the light of the relevant committee's report showing that the member concerned holds or carries on the office or activity in question.

Where the Council of the Presidency of the Grand National Assembly notes that a member of parliament, without valid authorisation or excuse, has failed, for a total of five days in one month, to take part in the work of the Assembly, that member shall forfeit the status of member where by majority vote the plenary Assembly so decides.

The term of office of a member of parliament whose words and deeds have, according to the Constitutional Court's judgment, led to the dissolution of his party, shall end on the date when that judgment is published in the Official Gazette. The Presidency of the Grand National Assembly shall enforce that part of the judgment and inform the plenary Assembly accordingly."

Section 90 [the first section of Chapter 4]

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

Section 101

"The Constitutional Court shall dissolve a political party where

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

(b) its general meeting, central office or executive committee ... takes a decision, issues a circular or makes a statement ... contrary to the provisions of Chapter 4 of this Law, or where the chairman, vice-chairman or general secretary makes any written or oral statement contrary to those provisions ..."

Section 103

"Where it is found that a political party has become a centre of activities contrary to the provisions of sections 78 to 88 and section 97 of the present Law, the party shall be dissolved by the Constitutional Court."

Section 107(1)

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

29. The applicants alleged that the dissolution of the People's Labour Party ("the HEP") had infringed their right to freedom of association, 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. Applicability of Article 11

30. As a preliminary point, the Government raised the question of the applicability of Article 11 of the Convention to political parties. In their submission, the States parties to the Convention had at no stage intended to submit their constitutional institutions, and in particular the principles they considered to be the essential conditions of their existence, to review by the Strasbourg institutions. The views of a political party, amplified by an organisation with many branches across the country, might expose the State to considerable danger where the party advocated territorial separatism and the fragmentation of national territory by stirring up hatred between the various sectors of the Turkish population. In such extreme cases, the criteria established in the Court's case-law on the subject were irrelevant in that the statements in question could not be classified as ordinary political discourse governed by the principle of pluralism of opinions. The Government considered that an examination of the Convention institutions' case-law regarding political parties showed that their dissolution fell within the margin of appreciation of constitutional courts, and pointed out that in the instant case Turkey's fundamental constitutional principles were at stake.

31. The applicants and the Commission considered that there was nothing in the wording of Article 11 to suggest that it did not apply to political parties.

32. In its judgment in *United Communist Party of Turkey and Others v. Turkey*, the Court held that political parties were a form of association essential to the proper functioning of democracy and that in view of the importance of democracy in the Convention system, there could be no doubt that they came within the scope of Article 11. It further noted that an association, including a political party, was not excluded from the protection afforded by the Convention simply because its activities were regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions (judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 17, §§ 25 and 27). The Court sees no reason to come to a different conclusion in the instant case.

It follows that the Government's objection cannot be allowed.

B. Compliance with Article 11

1. Whether there was interference

33. The Government, subject to their observations on the applicability of Article 11, and the applicants accepted that the HEP's dissolution amounted to interference with the applicants' right to freedom of association. That view is shared by the Court.

2. Whether the interference was justified

34. Such 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"

35. It was common ground that the interference was "prescribed by law", as the measures ordered by the Constitutional Court were based, *inter alia*, on Articles 2, 3 and 14 and former Article 68 of the Constitution and on sections 78, 80, 81 and 101 of Law no. 2820 on the regulation of political parties (see paragraphs 27-28 above).

(b) Legitimate aim

36. The Government submitted that the interference complained of had pursued several legitimate aims, namely the protection of public safety, the rights of others and national security and the preservation of the country's territorial integrity.

37. The applicants asserted that they and their party had always called for peaceful solutions to the problems faced by citizens of Kurdish origin in Turkey.

38. The Commission expressed the opinion that the measures in issue could be said to have pursued at least one of the legitimate aims under paragraph 2 of Article 11, namely the preservation of territorial integrity and, therefore, "national security".

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

(c) "Necessary in a democratic society"

(i) Arguments before the Court

(α) The applicants

40. The applicants disputed the reasons given by the Turkish Constitutional Court in its decision to dissolve the HEP. They pointed out in that connection that the concept of pluralism in a democratic society entailed freedom to express any opinions, even if they did not correspond to those expressed by the government.

41. They further submitted that in their public speeches the HEP's leaders had merely emphasised the existence of a "Kurdish" problem in Turkey and had always advocated a peaceful and democratic solution to the problem, in conformity with the standards laid down in international instruments governing civil liberties. They had never called for the secession of part of Turkey's territory. They pointed out that, in any event,

proposing such an idea constituted a punishable offence under Turkish criminal law and that none of the HEP's leaders had been convicted of any such offence before the party had been dissolved.

The applicants accordingly inferred that the HEP's dissolution had not been justified under the provisions of the Convention.

(β) The Government

42. The Government maintained that, according to the Turkish Constitutional Court, the principles on which the State's constitutional order was based, including that of the indivisibility of the nation, were absolute values to which political parties were required to adhere.

The Government submitted that the HEP, in asserting the "right to self-determination of the Kurdish people", had sought to create discrimination within the Turkish nation on the ground of ethnic origin. Its approach, which advocated the creation of a minority based on ethnic origin within the nation, was incompatible with national integrity, a concept based on equal rights for all citizens without any discrimination.

43. As to the fact that the HEP's leaders had not been convicted of any criminal offences, the Government observed that the dissolution of a political party was not a measure resulting from a breach of the criminal law but a means of preserving the free democratic system and, accordingly, had a preventive purpose. In short, activities not constituting criminal offences might be sufficient to justify a party's dissolution.

44. In the Government's submission, at a time when territorial integrity was threatened by terrorism, a political party's leaders should refrain from speaking out in support of terrorists, adopting their views or defending them. Referring to the impugned statements which the Constitutional Court had examined, the Government argued that the HEP's leadership had not at any stage distanced itself from such views, but instead had fully endorsed them.

The Government considered that, in those circumstances, the HEP's dissolution had been "necessary in a democratic society" and had met a pressing social need, namely the protection of public order and of the rights of others.

(γ) The Commission

45. The Commission considered that, although the HEP's leaders had been highly critical of the manner in which the Turkish security forces were conducting their campaign against pro-Kurdish terrorist organisations, such criticism was not in itself sufficient for the party to be equated with a terrorist organisation. Admittedly, the Commission noted, the PKK had used various principles advocated by the HEP, such as the right to self-determination and recognition of language rights, as pretexts to justify its acts of terrorism. The Commission considered, however, that the HEP could

not be criticised for having supported those principles – which in themselves did not conflict with the values of a democratic society – without calling for the use of violence.

(ii) The Court's assessment

46. 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.

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 (see, among many other authorities, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49, and *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, p. 26, § 37). 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 *United Communist Party of Turkey and Others*, cited above, pp. 20-21, §§ 42-43).

47. As to the links between democracy and the Convention, the Court has made the following observations (see, among other authorities, *United Communist Party of Turkey and Others*, cited above, pp. 21-22, § 45):

> "Democracy is without doubt a fundamental feature of the European public order ... That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights ... The Preamble goes on to affirm that European countries have a common heritage of political tradition, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention ...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society ...
>
> In addition, Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is 'necessary in a democratic society'. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from 'democratic society'. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it."

48. The Court has also defined as follows the limits within which political groups can continue to enjoy the protection of the Convention while conducting their activities (ibid., p. 27, § 57):

> "... 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."

49. On that point, the Court considers that a political party may campaign for a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic, and secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which does not comply with one or more of the rules of democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds (see, *mutatis mutandis*, *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, pp. 1256-57, §§ 46-47, and *Lawless v. Ireland* (merits), judgment of 1 July 1961, Series A no. 3, pp. 45-46, § 7).

50. Nor can it be ruled out that the programme of a political party or the statements of its leaders may conceal objectives and intentions different from those they proclaim. To verify that they do not, the content of the programme or statements must be compared with the actions of the party and its leaders and the positions they defend taken as a whole (see *United Communist Party of Turkey and Others*, p. 27, § 58, and *Socialist Party and Others*, pp. 1257-58, § 48, both judgments cited above).

51. Moreover, for the purpose of determining whether an interference is necessary in a democratic society, the adjective "necessary", within the meaning of Article 11 § 2, implies the existence of a "pressing social need".

The Court's task is not to take the place of the competent national authorities but rather to review under Article 11 the decisions they delivered pursuant to their power of appreciation. This does not mean that the Court's supervision is limited to ascertaining whether a respondent State exercised its discretion reasonably, carefully and in good faith. It must look at the interference complained of in the light of the case as a whole in order to determine whether it was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their

decisions on an acceptable assessment of the relevant facts (see, *mutatis mutandis*, *Ahmed and Others v. the United Kingdom*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2377-78, § 55, and *Goodwin v. the United Kingdom*, judgment of 27 March 1996, *Reports* 1996-II, pp. 500-01, § 40).

52. In the present case, the Court's task is to assess whether the HEP's dissolution and the accessory penalties imposed on the applicants met a "pressing social need" and whether they were "proportionate to the legitimate aims pursued".

53. The Court notes at the outset that in its judgment dissolving the HEP the Constitutional Court did not consider whether the party's programme and constitution were lawful but merely determined whether its political activities contravened the relevant statutory prohibitions. In dissolving the party, the Constitutional Court had regard to public statements made by the HEP's leaders, which it considered to constitute new facts and evidence that were binding on the party as a whole. Consequently, the Court may confine itself to examining those statements.

54. As to whether the means used in the HEP's political campaign were lawful and democratic or whether its leaders were advocating the use of violence as a political weapon, the Constitutional Court held that "the HEP's aims resembled those of terrorists" and that "the use of accusatory and aggressive statements based on falsehoods, which the HEP's leaders constantly repeated as a form of provocation, was likely to promote tolerance of terrorist acts and to justify and encourage their perpetrators". Those findings formed the basis of the Government's argument before the Court that the HEP's leaders had incited to ethnic hatred, insurrection and, therefore, violence.

55. The Court must examine whether such findings may be considered to have been based on an acceptable assessment of the relevant facts. It observes, firstly, that the HEP did not express any explicit support for or approval of the use of violence for political ends. Furthermore, incitement to ethnic hatred and incitement to insurrection are criminal offences in Turkey. At the material time, however, none of the HEP's leaders had been convicted of any such offence. That was precisely the argument relied on by the Constitutional Court in dismissing the allegation by Principal State Counsel at the Court of Cassation that the HEP had become a centre of illegal activities. In the absence of any calls for the use of violence or any other illegal methods, the Court is not persuaded by the Government's argument, which is based in part on the Constitutional Court's judgment, that the HEP supported and approved the use of violence or other illegal methods for political ends.

56. As to whether the HEP pursued aims that were incompatible with democratic principles, the Turkish Constitutional Court criticised the party for "seeking to divide the Turkish nation in two, with Turks on one side and

Kurds on the other, with the aim of establishing separate States" and for "seeking to destroy national and territorial integrity". The Court, like the Commission, observes that the HEP's political message amounted to claims that "citizens of Kurdish origin were not free to use their own language and were unable to make political demands based on the principle of self-determination, and the security forces campaigning against pro-Kurdish terrorist organisations were committing illegal acts and were responsible in part for the suffering of Kurdish citizens in certain parts of Turkey" (see the Commission's report of 1 March 1999, § 64).

57. The Court accepts that the principles supported by the HEP, such as the right to self-determination and recognition of language rights, are not in themselves contrary to the fundamental principles of democracy. It likewise agrees with the Commission's reasoning that if merely by advocating those principles a political group were held to be supporting acts of terrorism, that would reduce the possibility of dealing with related issues in the context of a democratic debate and would allow armed movements to monopolise support for the principles in question. That in turn would be strongly at variance with the spirit of Article 11 and the democratic principles on which it is based.

58. Moreover, the Court considers that, even if proposals inspired by such principles are likely to clash with the main strands of government policy or the convictions of the majority of the public, it is necessary for the proper functioning of democracy that political groups should be able to introduce them into public debate in order to help find solutions to general problems concerning politicians of all persuasions (see, among other authorities, *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, p. 25, § 52, and *United Communist Party of Turkey and Others*, cited above, p. 27, § 57). The Court considers that it was not satisfactorily established in the judgment of 14 July 1993 by which the HEP was dissolved that the party's policies were aimed at undermining the democratic regime in Turkey (see, *mutatis mutandis*, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 41, ECHR 1999-VIII). Nor was it argued before the Court that the HEP had any real chance of installing a regime which would not meet with the approval of everyone on the political stage (see, *mutatis mutandis, United Communist Party of Turkey and Others*, cited above, p. 27, § 57).

59. Moreover, the severe, hostile criticisms made by the HEP's leaders about certain actions of the armed forces in their anti-terrorist campaign cannot in themselves constitute sufficient evidence to equate the HEP with armed groups carrying out acts of violence. The Court reiterates in this connection that the limits of permissible criticism are wider with regard to the government than in relation to a private citizen. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the

press and public opinion (see, *mutatis mutandis*, *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, pp. 23-24, § 46). The Court is not persuaded that by criticising the actions of the armed forces the HEP's members of parliament and officials were pursuing any other goal than that of discharging their duty to draw attention to their electors' concerns.

60. As the HEP did not advocate any policy that could have undermined the democratic regime in Turkey and did not urge or seek to justify the use of force for political ends, its dissolution cannot reasonably be said to have met a "pressing social need".

61. Reiterating that the dissolution of a political party is a "drastic" measure (see *United Communist Party of Turkey and Others*, pp. 26 and 27-28, §§ 54 and 61, and *Socialist Party and Others*, p. 1258, § 51, both judgments cited above), the Court considers that in the instant case such interference with the applicants' freedom of association was not necessary in a democratic society.

Accordingly, the HEP's dissolution breached Article 11 of the Convention.

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

62. The applicants also alleged a violation of Articles 9, 10 and 14 of the Convention. As their complaints concern the same facts as those examined under Article 11, the Court considers that it is not necessary to examine them separately.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

63. The applicants complained that they had not had a public hearing in the proceedings before the Constitutional Court. They submitted that that amounted to a breach of Article 6 § 1 of the Convention.

64. The Government objected at the outset that Article 6 was not applicable to the proceedings before the Constitutional Court. They argued, in particular, that those proceedings had related solely to the constitutionality of the HEP's actions and not in any way to the applicants' civil rights.

65. The Commission accepted that argument, but the applicants contested it.

66. The Court has already held in its admissibility decision in the case of *Refah Partisi (The Welfare Party) and Others v. Turkey* (nos. 41340/98, 41342/98, 41343/98, 41344/98, 3 October 2000) [*Note by the Registry*. This decision is obtainable from the Registry] that similar complaints were incompatible *ratione materiae* with Article 6 of the Convention:

"... the question whether Article 6 § 1 is applicable to constitutional proceedings must accordingly be treated on the merits of each case, in the light of all the circumstances (see *Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, p. 18, § 37). The Court must therefore determine whether the allegations made by the applicants in the course of the constitutional proceedings in issue gave rise to the determination of a civil right or of a criminal charge.

The proceedings before the Constitutional Court concerned a dispute over Refah's right as a political party to continue its political activities. The right in question was therefore a political right *par excellence* and as such did not qualify for protection under Article 6 § 1 of the Convention.

The same applies to Article 69 of the Constitution, which prohibits founding members and leaders of dissolved political parties from founding and leading a new party. That provision also entails a restriction on the political rights of those concerned which cannot fall within the scope of Article 6 § 1 of the Convention, either as a dispute over a civil right or as a criminal charge.

It is true that, pursuant to domestic legislation, Refah's dissolution automatically led to the transfer of its assets to the Treasury and that on that account a dispute could have arisen over a pecuniary right, and hence a civil right within the meaning of Article 6 § 1 of the Convention. However, the 'dispute' before the Constitutional Court did not in any way concern Refah's right to the peaceful enjoyment of its possessions. The parties to the proceedings, namely Principal State Counsel and Refah, did not contest the transfer of Refah's assets to the Treasury – a direct legal consequence of Refah's dissolution – either in the Constitutional Court or in any other proceedings. The Court takes the view that the instant case differs from the *Ruiz-Mateos* case cited above (judgment of 23 June 1993, Series A no. 262, p. 24, § 59), which concerned proceedings that were undeniably 'civil' within the meaning of Article 6 § 1 and constitutional proceedings that were inextricably linked to them. In the instant case, however, there was no dispute over a civil right within the meaning of Article 6 § 1 of the Convention as none of the proceedings concerned the transfer of the parties' assets (see, *mutatis mutandis*, *Pierre-Bloch v. France*, [judgment of 21 October 1997,] *Reports of Judgments and Decisions* 1997-VI, [pp. 2222-26,] §§ 48-61).

The Court therefore considers that the proceedings in issue did not concern the determination of the applicants' civil rights or obligations or of any criminal charge against them within the meaning of Article 6 § 1 of the Convention."

67. The Court sees no reason to come to a different conclusion in the instant case. The HEP's right to the peaceful enjoyment of its possessions did not form the subject matter either of the "dispute" before the Constitutional Court or of any other proceedings, the transfer of the party's assets to the Treasury being a direct legal consequence of its dissolution.

Accordingly, Article 6 of the Convention is not applicable in the instant case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicants each claimed 500,000 French francs (FRF) for pecuniary damage. They submitted that, after the HEP had been dissolved, they had also been convicted in criminal proceedings on account of speeches they had made in the course of their activities as members of the party and that as a result they had been unable to carry on their profession as lawyers while in detention.

70. The Government objected to this claim.

71. The Court observes that there is insufficient evidence of a causal link between the matter it has found to constitute a violation (see paragraph 61 above) and the applicants' alleged loss of earnings. It cannot therefore allow this claim.

B. Non-pecuniary damage

72. The applicants each claimed FRF 250,000 under this head.

73. The Government again objected to their claim.

74. The Court notes that the HEP was active for three years before being dissolved by the Constitutional Court. Mr Yazar, Mr Karataş and Mr Aksoy therefore sustained definite non-pecuniary damage. Making its assessment on an equitable basis, the Court awards them 10,000 euros (EUR) each.

C. Costs and expenses

75. The applicants claimed FRF 229,700 for costs and expenses, comprising FRF 144,700 for the fees charged by their lawyers for representing them before the Constitutional Court and in Strasbourg, and FRF 85,000 for related translation, communication and travel expenses.

76. The Government considered those sums excessive. They maintained, in particular, that the documents submitted in support of the applicants' claim concerned expenses unrelated to the proceedings in the present case and that the sums claimed in respect of fees were not sufficiently specific.

77. The Court reiterates that it may award an applicant not only the costs and expenses incurred before the Strasbourg institutions, but also those

incurred in the national courts for the prevention or redress of a violation of the Convention found by the Court (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 45, ECHR 1999-I).

78. In the present case the costs relating to the HEP's representation before the Constitutional Court were incurred with a view to preventing the party's dissolution, the circumstance which led to the above finding of a violation (see paragraph 55). Consequently, those costs are relevant to the determination of just satisfaction.

79. The Court notes, however, that the applicants have not given full details of the number of hours' work for which their lawyers sought payment. In accordance with Rule 60 § 2 of the Rules of Court, it cannot therefore allow the claim in full. Making its assessment on an equitable basis, the Court awards the applicants a total sum of EUR 10,000 for costs and expenses.

D. Default interest

80. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 4.26% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection concerning the applicability of Article 11 of the Convention;

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

3. *Holds* that it is not necessary to determine whether there has been a violation of Articles 9, 10 and 14 of the Convention;

4. *Holds* that Article 6 of the Convention is not applicable in the instant case;

5. *Holds*

   (a) that the respondent State is to pay the applicants, within three months, the following sums, plus any tax or stamp duty that may be chargeable at the time of payment, to be converted into Turkish liras at the rate applicable on the date of settlement:

      (i) EUR 10,000 (ten thousand euros) to each of the three applicants, Mr Yazar, Mr Karataş and Mr Aksoy for non-pecuniary damage, making a total of EUR 30,000 (thirty thousand euros);

(ii) EUR 10,000 (ten thousand euros) to the applicants jointly for costs and expenses;

(b) that simple interest at an annual rate of 4.26% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in French, and notified in writing on 9 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President