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

GRAND CHAMBER

CASE OF REFAH PARTİSİ (THE WELFARE PARTY) AND OTHERS v. TURKEY

(Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98)

JUDGMENT

STRASBOURG

13 February 2003

In the case of Refah Partisi (the Welfare Party) and Others v. Turkey,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Mr G. RESS,
Mr GAUKUR JÖRUNDSSON,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr P. LORENZEN,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mr A. KOVLER,
Mrs A. MULARONI,

and also of Mr P.J. MAHONEY, *Registrar*,

Having deliberated in private on 19 June 2002 and 22 January 2003,

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

PROCEDURE

1. The case originated in four applications (nos. 41340/98, 41342/98, 41343/98 and 41344/98) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish political party, Refah Partisi (the Welfare Party – “Refah”) and three Turkish nationals, Mr Necmettin Erbakan, Mr Şevket Kazan and Mr Ahmet Tekdal (“the applicants”) on 22 May 1998.

2. The applicants alleged in particular that the dissolution of Refah by the Turkish Constitutional Court and the suspension of certain political rights of the other applicants, who were leaders of Refah at the material time, had breached Articles 9, 10, 11, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1.

3. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

4. The applications were allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). They were joined (Rule 43 § 1) and on 3 October 2000 they were declared partly admissible by a Chamber of that Section, composed of Mr J.-P. Costa, President, Mr W. Fuhrmann, Mr L. Loucaides, Mr R. Türmen, Sir Nicolas Bratza, Mrs H.S. Greve, Mr K. Traja, judges, and Mrs S. Dollé, Section Registrar.

5. On 31 July 2001 the Chamber gave judgment, holding by four votes to three that there had been no violation of Article 11 of the Convention and unanimously that it was not necessary to examine separately the complaints under Articles 9, 10, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1. The joint dissenting opinion of Judges Fuhrmann, Loucaides and Sir Nicolas Bratza was annexed to the judgment.

6. On 30 October 2001 the applicants requested, under Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber.

On 12 December 2001 a panel of the Grand Chamber decided to refer the case to the Grand Chamber.

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

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

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 19 June 2002 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr	Ş. ALPASLAN,	*Agent*,
Mrs	D. AKÇAY,	
Mr	M. ÖZMEN,	*Co-Agents*,
Mr	Y. BELET,	*Counsel*,
Mrs	A. GÜNYAKTI,	
Mrs	G. ACAR,	
Mrs	V. SIRMEN,	*Advisers*;

(b) *for the applicants*

Mr	L. HINCKER,	
Mrs	M. LEMAÎTRE,	
Mr	G. NUSS,	*Counsel*,
Mrs	V. BILLAMBOZ,	
Mr	M. KAMALAK,	
Mr	Ş. MALKOÇ,	*Advisers.*

One of the applicants, Mr Kazan, was also present.
The Court heard addresses by Mr Kazan, Mr Hincker and Mr Alpaslan.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants

10. The first applicant, Refah Partisi (the Welfare Party – “Refah”), was a political party founded on 19 July 1983. It was represented by its chairman, Mr Necmettin Erbakan, who is also the second applicant. He was born in 1926 and lives in Ankara. An engineer by training, he is a politician. At the material time he was a member of Parliament and Refah’s chairman.

The third applicant, Mr Şevket Kazan, who was born in 1933, lives in Ankara. He is a politician and a lawyer. At the material time he was a member of Parliament and a vice-chairman of Refah. The fourth applicant, Mr Ahmet Tekdal, who was born in 1931, lives in Ankara. He is a politician and a lawyer. At the material time he was a member of Parliament and a vice-chairman of Refah.

11. Refah took part in a number of general and local elections. In the local elections in March 1989 Refah obtained about 10% of the votes and its candidates were elected mayor in a number of towns, including five large cities. In the general election of 1991 it obtained 16.88% of the votes. The sixty-two MPs elected as a result took part between 1991 and 1995 in the work of Parliament and its various committees, including the Committee on Constitutional Questions, which proposed amendments to Article 69 of the Constitution that became law on 23 July 1995. During the debate in Parliament on the new sixth paragraph of Article 69 of the Constitution (see paragraph 45 below) the chairman of the Committee on Constitutional Questions explained when he presented the draft it had prepared that the Constitutional Court would not restrict itself to noting the unconstitutional nature of the individual acts of the members of a party but would then be obliged to declare that the party concerned had become a centre of anti-constitutional activities on account of those acts. One MP, representing the parliamentary group of the Motherland Party, emphasised the need to change the relevant provisions of Law no. 2820 on the regulation of political parties to take account of the new sixth paragraph of Article 69 of the Constitution.

Ultimately, Refah obtained approximately 22% of the votes in the general election of 24 December 1995 and about 35% of the votes in the local elections of 3 November 1996.

The results of the 1995 general election made Refah the largest political party in Turkey with a total of 158 seats in the Grand National Assembly (which had 450 members at the material time). On 28 June 1996 Refah came to power by forming a coalition government with the centre-right True Path Party (Doğru Yol Partisi), led by Mrs Tansu Ciller. According to an opinion poll carried out in January 1997, if a general election had been held at that time, Refah would have obtained 38% of the votes. The same poll predicted that Refah might obtain 67% of the votes in the general election to be held roughly four years later.

B. Proceedings in the Constitutional Court

1. Principal State Counsel's submissions

12. On 21 May 1997 Principal State Counsel at the Court of Cassation applied to the Turkish Constitutional Court to have Refah dissolved on the grounds that it was a "centre" (*mihrak*) of activities contrary to the principles of secularism. In support of his application, he referred to the following acts and remarks by certain leaders and members of Refah.

– Whenever they spoke in public Refah's chairman and other leaders advocated the wearing of Islamic headscarves in State schools and buildings occupied by public administrative authorities, whereas the Constitutional Court had already ruled that this infringed the principle of secularism enshrined in the Constitution.

– At a meeting on constitutional reform Refah's chairman, Mr Necmettin Erbakan, had made proposals tending towards the abolition of secularism in Turkey. He had suggested that the adherents of each religious movement should obey their own rules rather than the rules of Turkish law.

– On 13 April 1994 Mr Necmettin Erbakan had asked Refah's representatives in the Grand National Assembly to consider whether the change in the social order which the party sought would be "peaceful or violent" and would be achieved "harmoniously or by bloodshed".

– At a seminar held in January 1991 in Sivas, Mr Necmettin Erbakan had called on Muslims to join Refah, saying that only his party could establish the supremacy of the Koran through a holy war (jihad) and that Muslims should therefore make donations to Refah rather than distributing alms to third parties.

– During Ramadan Mr Necmettin Erbakan had received the heads of the Islamist movements at the residence reserved for the Prime Minister, thus assuring them of his support.

– Several members of Refah, including some in high office, had made speeches calling for the secular political system to be replaced by a theocratic system. These persons had also advocated the elimination of the opponents of this policy, if necessary by force. Refah, by refusing to open disciplinary proceedings against the members concerned and even, in certain cases, facilitating the dissemination of their speeches, had tacitly approved the views expressed.

– On 8 May 1997 a Refah MP, Mr İbrahim Halil Çelik, had said in front of journalists in the corridors of the parliament building that blood would flow if an attempt was made to close the "*İmam-Hatip*" theological colleges, that the situation might become worse than in Algeria, that he personally wanted blood to flow so that democracy could be installed in the country, that he would strike back against anyone who attacked him and that he would fight to the end for the introduction of Islamic law (sharia).

– The Minister of Justice, Mr Şevket Kazan (a Refah MP and vice-chairman of the party), had expressed his support for the mayor of Sincan by visiting him in the prison where he had been detained pending trial after being charged with publicly vindicating international Islamist terrorist groups.

Principal State Counsel further observed that Refah had not opened any disciplinary proceedings against those responsible for the above-mentioned acts and remarks.

13. On 7 July 1997 Principal State Counsel submitted new evidence against Refah to the Constitutional Court.

2. The applicants' defence

14. On 4 August 1997 Refah's representatives filed their defence submissions, in which they relied on international human-rights protection instruments, including the Convention, pointing out that these instruments formed part of Turkish written law. They further referred to the case-law of the Commission, which had expressed the opinion that Article 11 of the Convention had been breached in the cases concerning the United Communist Party of Turkey and the Socialist Party, and to the case-law of the Court and the Commission on the restrictions on freedom of expression and freedom of association authorised by the second paragraphs of Articles 10 and 11 of the Convention. They contended that the dissolution of Refah was not prompted by a pressing social need and was not necessary in a democratic society. Nor, according to Refah's representatives, was their party's dissolution justified by application of the "clear and present danger" test laid down by the Supreme Court of the United States of America.

15. Refah's representatives further rejected Principal State Counsel's argument that the party was a "centre" of activities which undermined the secular nature of the Republic. They submitted that Refah was not caught by the criteria laid down in the Law on the regulation of political parties for

determining whether a political party constituted a “centre of anti-constitutional activities”. They observed, *inter alia*, that the prosecuting authorities had not issued any warning to Refah (which had four million members) that might have enabled it to expel any of its members whose acts had contravened the provisions of the Criminal Code.

16. Refah’s representatives also set out their point of view on the concept of secularism. They asserted that the principle of secularism implied respect for all beliefs and that Refah had shown such respect in its political activity.

17. The applicants’ representatives alleged that in accusing Mr Necmettin Erbakan of supporting the use of force to achieve political ends and of infringing the principle of secularism the prosecuting authorities had merely cited extracts from his speeches which they had distorted and taken out of context. Moreover, these remarks were covered by Mr Necmettin Erbakan’s parliamentary immunity. They further noted that the dinner he had given to senior officials of the Religious Affairs Department and former members of the theology faculty had been presented by Principal State Counsel as a reception organised for the leaders of Islamist fundamentalist movements, which had in any event been legally proscribed since 1925.

18. With regard to the remarks of the other Refah leaders and members criticised by Principal State Counsel’s Office, Refah’s representatives observed that these did not constitute any criminal offence.

They asserted that none of the MPs whose speeches had been referred to by Principal State Counsel was authorised to represent Refah or held office within the party and claimed that the prosecuting authorities had not set in motion the procedure laid down in the Law on the regulation of political parties so as to give Refah the opportunity, if the need arose, to decide whether or not the persons concerned should continue to be members of the party; the first time Refah’s leadership had been informed of the remarks criticised in the case had been when they read Principal State Counsel’s submissions. The three MPs under attack had been expelled from the party, which had thus done what was necessary to avoid becoming a “centre” of illegal activities within the meaning of the Law on the regulation of political parties.

3. *The parties’ final submissions*

19. On 5 August 1997 Principal State Counsel filed his observations on the merits of the case with the Constitutional Court. He submitted that according to the Convention and the case-law of the Turkish courts on constitutional-law issues nothing obliged States to tolerate the existence of political parties that sought the destruction of democracy and the rule of law. He contended that Refah, by describing itself as an army engaged in a jihad and by openly declaring its intention to replace the Republic’s statute

law by sharia, had demonstrated that its objectives were incompatible with the requirements of a democratic society. Refah's aim to establish a plurality of legal systems (in which each group would be governed by a legal system in conformity with its members' religious beliefs) constituted the first stage in the process designed to substitute a theocratic regime for the Republic.

20. In their observations on the merits of the case, Refah's representatives again argued that the dissolution of their party could not be grounded on any of the restrictions permitted by the second paragraph of Article 11 of the Convention. They went on to say that Article 17 was not applicable in the case, as Refah had nothing in common with political parties which sought to install a totalitarian regime. Furthermore, the plurality of legal systems which their party proposed was actually intended to promote the freedom to enter into contracts and the freedom to choose which court should have jurisdiction.

21. On 11 November 1997 Principal State Counsel submitted his observations orally. On 18 and 20 November 1997 Mr Necmettin Erbakan submitted his oral observations on behalf of Refah.

4. The Constitutional Court's judgments

22. In a judgment of 9 January 1998, which it delivered following proceedings on preliminary issues it had instituted of its own motion as the court dealing with the merits, the Constitutional Court ruled that, regard being had to Article 69 § 6 of the Constitution, the second paragraph of section 103 of the Law on the regulation of political parties was unconstitutional and declared it null and void. Article 69 § 6, taken together with section 101(d) of the same Law, provided that for a political party to be considered a "centre" of activities contrary to the fundamental principles of the Republic its members had to have been convicted of criminal offences. According to the Constitutional Court, that legal restriction did not cover all cases where the principles of the Republic had been flouted. It pointed out, among other observations, that after the repeal of Article 163 of the Criminal Code activities contrary to the principle of secularism no longer attracted criminal penalties.

23. On 16 January 1998 the Constitutional Court dissolved Refah on the ground that it had become a "centre of activities contrary to the principle of secularism". It based its decision on sections 101(b) and 103(1) of Law no. 2820 on the regulation of political parties. It also noted the transfer of Refah's assets to the Treasury as an automatic consequence of dissolution, in accordance with section 107 of Law no. 2820.

24. In its judgment the Constitutional Court first dismissed the preliminary objections raised by Refah. In that connection it held that the parliamentary immunity of the MPs whose remarks had been mentioned in Principal State Counsel's submissions of 21 May 1997 had nothing to do

with consideration of an application for the dissolution of a political party and forfeiture of political rights by its members, but was a question of the criminal responsibility of the MPs concerned, which was not a matter of constitutional law.

25. With regard to the merits, the Constitutional Court held that while political parties were the main protagonists of democratic politics their activities were not exempt from certain restrictions. In particular, activities by them incompatible with the rule of law could not be tolerated. The Constitutional Court referred to the provisions of the Constitution which imposed respect for secularism on the various organs of political power. It also cited the numerous provisions of domestic legislation requiring political parties to apply the principle of secularism in a number of fields of political and social life. The Constitutional Court observed that secularism was one of the indispensable conditions of democracy. In Turkey the principle of secularism was safeguarded by the Constitution, on account of the country's historical experience and the specific features of Islam. The rules of sharia were incompatible with the democratic regime. The principle of secularism prevented the State from manifesting a preference for a particular religion or belief and constituted the foundation of freedom of conscience and equality between citizens before the law. Intervention by the State to preserve the secular nature of the political regime had to be considered necessary in a democratic society.

26. The Constitutional Court held that the following evidence proved that Refah had become a centre of activities contrary to the principle of secularism (see paragraphs 27-39 below):

27. Refah's chairman, Mr Necmettin Erbakan, had encouraged the wearing of Islamic headscarves in public and educational establishments. On 10 October 1993, at the party's Fourth Ordinary General Meeting, he had said:

> "... when we were in government, for four years, the notorious Article 163 of the Persecution Code was never applied against any child in the country. In our time there was never any question of hostility to the wearing of headscarves ..."

In his speech of 14 December 1995 before the general election he had said:

> "... [university] chancellors are going to retreat before the headscarf when Refah comes to power."

But manifesting one's religion in such a manner amounted to exerting pressure on persons who did not follow that practice and created discrimination on the ground of religion or beliefs. That finding was supported by various rulings of the Constitutional Court and the Supreme Administrative Court and by the case-law of the European Commission of Human Rights on applications nos. 16278/90 and 18783/91 concerning the wearing of headscarves at universities.

28. The plurality of legal systems proposed by Mr Necmettin Erbakan was nothing to do with the freedom to enter into contracts as Refah claimed, but was an attempt to establish a distinction between citizens on the ground of their religion and beliefs and was aimed at the installation of a theocratic regime. On 23 March 1993 Mr Erbakan had made the following speech to the National Assembly:

> "... 'you shall live in a manner compatible with your beliefs'. We want despotism to be abolished. There must be several legal systems. The citizen must be able to choose for himself which legal system is most appropriate for him, within a framework of general principles. Moreover, that has always been the case throughout our history. In our history there have been various religious movements. Everyone lived according to the legal rules of his own organisation, and so everyone lived in peace. Why, then, should I be obliged to live according to another's rules? ... The right to choose one's own legal system is an integral part of the freedom of religion."

In addition, Mr Necmettin Erbakan had spoken as follows on 10 October 1993 at a Refah party conference:

> "... we shall guarantee all human rights. We shall guarantee to everyone the right to live as he sees fit and to choose the legal system he prefers. We shall free the administration from centralism. The State which you have installed is a repressive State, not a State at the people's service. You do not allow the freedom to choose one's code of law. When we are in power a Muslim will be able to get married before the mufti, if he wishes, and a Christian will be able to marry in church, if he prefers."

29. The plurality of legal systems advocated by Mr Necmettin Erbakan in his speeches had its origin in the practice introduced in the first years of Islam by the "Medina Agreement", which had given the Jewish and polytheist communities the right to live according to their own legal systems, not according to Islamic law. On the basis of the Medina Agreement some Islamist thinkers and politicians had proposed a model of peaceful social co-existence under which each religious group would be free to choose its own legal system. Since the foundation of the Nizam Party in 1970 (dissolved by a judgment of 2 May 1971) Mr Necmettin Erbakan had been seeking to replace the single legal system with a plurality of legal systems.

30. The Constitutional Court further observed that in a plurality of legal systems, as proposed by Refah, society would have to be divided into several religious movements; each individual would have to choose the movement to which he wished to belong and would thus be subjected to the rights and obligations prescribed by the religion of his community. The Constitutional Court pointed out that such a system, whose origins lay in the history of Islam as a political regime, was inimical to the consciousness of allegiance to a nation having legislative and judicial unity. It would naturally impair judicial unity since each religious movement would set up its own courts and the ordinary courts would be obliged to apply the law according to the religion of those appearing before them, thus obliging the latter to reveal their beliefs. It would also undermine legislative and judicial

unity, the preconditions for secularism and the consciousness of nationhood, given that each religious movement would be empowered to decree what legal rules should be applicable to its members.

31. In addition, Mr Necmettin Erbakan had made a speech on 13 April 1994 to the Refah group in Parliament in which he had advocated setting up a theocratic regime, if necessary through force:

> "The second important point is this: Refah will come to power and a just [social] order [*adil dozen*] will be established. The question we must ask ourselves is whether this change will be violent or peaceful; whether it will entail bloodshed. I would have preferred not to have to use those terms, but in the face of all that, in the face of terrorism, and so that everyone can see the true situation clearly, I feel obliged to do so. Today Turkey must take a decision. The Welfare Party will establish a just order, that is certain. [But] will the transition be peaceful or violent; will it be achieved harmoniously or by bloodshed? The sixty million [citizens] must make up their minds on that point."

32. The reception given by Mr Necmettin Erbakan at the Prime Minister's residence to the leaders of various religious movements, who had attended in vestments denoting their religious allegiance, unambiguously evidenced Refah's chairman's support for these religious groups *vis-à-vis* public opinion.

33. In a public speech in April 1994 Mr Şevki Yılmaz, MP for the province of Rize, had issued a clear call to wage a jihad and had argued for the introduction of Islamic law, making the following declaration:

> "We shall certainly call to account those who turn their backs on the precepts of the Koran and those who deprive Allah's Messenger of his jurisdiction in their country."

In another public speech, also in April 1994, Mr Şevki Yılmaz had said:

> "In the hereafter you will be summoned with the leaders you have chosen in this life. ... Have you considered to what extent the Koran is applied in this country? I have done the sums. Only 39% [of the rules] in the Koran are applied in this country. Six thousand five hundred verses have been quietly forgotten ... You found a Koranic school, you build a hostel, you pay for a child's education, you teach, you preach. ... None of that is part of the chapter on jihad but of that on the *amel-i salih* [peacetime activities]. Jihad is the name given to the quest for power for the advent of justice, for the propagation of justice and for glorification of Allah's Word. Allah did not see that task as an abstract political concept; he made it a requirement for warriors [*cahudi*]. What does that mean? That jihad must be waged by an army! The commander is identified ... The condition to be met before prayer [*namaz*] is the Islamisation of power. Allah says that, before mosques, it is the path of power which must be Muslim ... It is not erecting vaulted ceilings in the places of prayer which will lead you to Paradise. For Allah does not ask whether you have built up vaulted ceilings in this country. He will not ask that. He will ask you if you have reached a sufficient level ... today, if Muslims have a hundred liras, they must give thirty to the Koranic schools, to train our children, girls and boys, and sixty must be given to the political establishments which open the road to power. Allah asked all His prophets to fight for power. You cannot name a single member of a religious movement who does not fight for power. I tell you, if I had as many heads as I have hairs on my head, even if each of those heads were to be torn from my shoulders for following the way of the Koran,

I would not abandon my cause ... The question Allah will ask you is this: ‘Why, in the time of the blasphemous regime, did you not work for the construction of an Islamic State?’ Erbakan and his friends want to bring Islam to this country in the form of a political party. The prosecutor understood that clearly. If we could understand that as he did, the problem would be solved. Even Abraham the Jew has realised that in this country the symbol of Islam is Refah. He who incites the Muslim community [*cemaat*] to take up arms before political power is in Muslim hands is a fool, or a traitor doing the bidding of others. For none of the prophets authorised war before the capture of State power. ... Muslims are intelligent. They do not reveal how they intend to beat their enemy. The general staff gives orders and the soldiers obey. If the general staff reveals its plan, it is up to the commanders of the Muslim community to make a new plan. Our mission is not to talk, but to apply the war plan, as soldiers in the army ...”

Criminal proceedings had been brought against Mr Şevki Yılmaz. Although his antipathy to secularism was well-known, Refah had adopted him as a candidate in local-government elections. After he had been elected mayor of Rize, Refah had made sure that he was elected as an MP in the Turkish Grand National Assembly.

34. In a public speech on 14 March 1993 and a television interview first recorded in 1992 and rebroadcast on 24 November 1996, Mr Hasan Hüseyin Ceylan, Refah MP for the province of Ankara, had encouraged discrimination between believers and non-believers and had predicted that if the supporters of applying sharia came to power they would annihilate non-believers:

“Our homeland belongs to us, but not the regime, dear brothers. The regime and Kemalism belong to others. ... Turkey will be destroyed, gentlemen. People say: Could Turkey become like Algeria? Just as, in Algeria, we got 81% [of the votes], here too we will reach 81%, we will not remain on 20%. Do not waste your energy on us – I am speaking here to you, to those ... of the imperialist West, the colonising West, the wild West, to those who, in order to unite with the rest of the world, become the enemies of honour and modesty, those who lower themselves to the level of dogs, of puppies, in order to imitate the West, to the extent of putting dogs between the legs of Muslim women – it is to you I speak when I say: ‘Do not waste your energy on us, you will die at the hands of the people of Kırıkkale.’ ”

“... the army says: ‘We can accept it if you’re a supporter of the PKK, but a supporter of sharia, never.’ Well you won’t solve the problem with that attitude. If you want the solution, it’s sharia.”

Refah had ensured that Mr Ceylan was elected as an MP and its local branches had played videotapes of this speech and the interview.

35. Refah’s vice-chairman, Mr Ahmet Tekdal, in a speech he made in 1993 while on pilgrimage in Saudi Arabia which was shown by a Turkish television station, had said that he advocated installing a regime based on sharia:

“In countries which have a parliamentary regime, if the people are not sufficiently aware, if they do not work hard enough to bring about the advent of ‘*hak nizami*’ [a just order or God’s order], two calamities lie ahead. The first calamity is the renegades they will have to face. They will be tyrannised by them and will eventually disappear.

The second calamity is that they will not be able to give a satisfactory account of themselves to Allah, as they will not have worked to establish ‘*hak nizami*’. And so they will likewise perish. Venerable brothers, our duty is to do what is necessary to introduce the system of justice, taking these subtleties into consideration. The political apparatus which seeks to establish ‘*hak nizami*’ in Turkey is the Welfare Party.”

36. On 10 November 1996 the mayor of Kayseri, Mr Şükrü Karatepe, had urged the population to renounce secularism and asked his audience to “keep their hatred alive” until the regime was changed, in the following terms:

“The dominant forces say ‘either you live as we do or we will sow discord and corruption among you’. So even Welfare Party Ministers dare not reveal their world-outlook inside their Ministries. This morning I too attended a ceremony in my official capacity. When you see me dressed up like this in all this finery, don’t think it’s because I’m a supporter of secularism. In this period when our beliefs are not respected, and indeed are blasphemed against, I have had to attend these ceremonies in spite of myself. The Prime Minister, other Ministers and MPs have certain obligations. But you have no obligations. This system must change. We have waited, we will wait a little longer. Let us see what the future has in store for us. And let Muslims keep alive the resentment, rancour and hatred they feel in their hearts.”

Mr Şükrü Karatepe had been convicted of inciting the people to hatred on the ground of religion.

37. On 8 May 1997 Mr İbrahim Halil Çelik, Refah MP for the province of Şanlıurfa, had spoken in Parliament in favour of the establishment of a regime based on sharia and approving acts of violence like those which were taking place in Algeria:

“If you attempt to close down the ‘*İmam-Hatip*’ theological colleges while the Welfare Party is in government, blood will flow. It would be worse than in Algeria. I too would like blood to flow. That’s how democracy will be installed. And it will be a beautiful thing. The army has not been able to deal with 3,500 members of the PKK. How would it see off six million Islamists? If they piss into the wind they’ll get their faces wet. If anyone attacks me I will strike back. I will fight to the end to introduce sharia.”

Mr İbrahim Halil Çelik had been expelled from the party one month after the application for dissolution had been lodged. His exclusion had probably only been an attempt to evade the penalty in question.

38. Refah’s vice-chairman, the Minister of Justice, Mr Şevket Kazan, had visited a person detained pending trial for activities contrary to the principle of secularism, thus publicly lending him his support as a Minister.

39. On the basis of the evidence adduced on 7 July 1997 by Principal State Counsel’s Office, the Constitutional Court held that the following further evidence confirmed that Refah was a centre of activities contrary to the principle of secularism:

– In a public speech on 7 May 1996 Mr Necmettin Erbakan had emphasised the importance of television as an instrument of propaganda in the holy war being waged in order to establish Islamic order:

"... A State without television is not a State. If today, with your leadership, you wished to create a State, if you wanted to set up a television station, you would not even be able to broadcast for more than twenty-four hours. Do you believe it is as easy as that to create a State? That's what I told them ten years ago. I remember it now. Because today people who have beliefs, an audience and a certain vision of the world, have a television station of their own, thanks be to God. It is a great event.

Conscience, the fact that the television [channel] has the same conscience in all its programmes, and that the whole is harmonious, is very important. A cause cannot be fought for without [the support of] television. Besides, today we can say that television plays the role of artillery or an air force in the jihad, that is the war for domination of the people ... it would be unthinkable to send a soldier to occupy a hill before those forces had shelled or bombed it. That is why the jihad of today cannot be waged without television. So, for something so vital, sacrifices must be made. What difference does it make if we sacrifice money? Death is close to all of us. When everything is dark, after death, if you want something to show you the way, that something is the money you give today, with conviction, for Kanal 7. It was to remind you of that that I shared my memories with you.

... That is why, from now on, with that conviction, we will truly make every sacrifice, until it hurts. May those who contribute, with conviction, to the supremacy of *Hakk* [Allah] be happy. May Allah bless you all, and may He grant Kanal 7 even more success. Greetings."

– By a decree of 13 January 1997 the cabinet (in which the Refah members formed a majority) had reorganised working hours in public establishments to make allowances for fasting during Ramadan. The Supreme Administrative Court had annulled this decree on the ground that it undermined the principle of secularism.

40. The Constitutional Court observed that it had taken into consideration international human-rights protection instruments, including the Convention. It also referred to the restrictions authorised by the second paragraph of Article 11 and Article 17 of the Convention. It pointed out in that context that Refah's leaders and members were using democratic rights and freedoms with a view to replacing the democratic order with a system based on sharia. The Constitutional Court observed:

"Democracy is the antithesis of sharia. [The] principle [of secularism], which is a sign of civic responsibility, was the impetus which enabled the Turkish Republic to move on from Ummah [*ümmet* – the Muslim religious community] to the nation. With adherence to the principle of secularism, values based on reason and science replaced dogmatic values. ... Persons of different beliefs, desiring to live together, were encouraged to do so by the State's egalitarian attitude towards them. ... Secularism accelerated civilisation by preventing religion from replacing scientific thought in the State's activities. It creates a vast environment of civic responsibility and freedom. The philosophy of modernisation of Turkey is based on a humanist ideal, namely living in a more human way. Under a secular regime religion, which is a specific social institution, can have no authority over the constitution and governance of the State. ... Conferring on the State the right to supervise and oversee religious matters cannot be regarded as interference contrary to the requirements of democratic society. ... Secularism, which is also the instrument of the transition to democracy, is the

> philosophical essence of life in Turkey. Within a secular State religious feelings simply cannot be associated with politics, public affairs and legislative provisions. Those are not matters to which religious requirements and thought apply, only scientific data, with consideration for the needs of individuals and societies."

The Constitutional Court held that where a political party pursued activities aimed at bringing the democratic order to an end and used its freedom of expression to issue calls to action to achieve that aim, the Constitution and supranational human-rights protection rules authorised its dissolution.

41. The Constitutional Court observed that the public statements of Refah's leaders, namely those of Mr Necmettin Erbakan, Mr Şevket Kazan and Mr Ahmet Tekdal, had directly engaged Refah's responsibility with regard to the constitutionality of its activities. It further observed that the public statements made by MPs Mr Şevki Yılmaz, Mr Hasan Hüseyin Ceylan and Mr İbrahim Halil Çelik, and by the mayor of Kayseri, Mr Şükrü Karatepe, had likewise engaged the party's responsibility since it had not reacted to them in any way or sought to distance itself from them, or at least not before the commencement of the dissolution proceedings.

42. As an additional penalty, the Constitutional Court decided to strip Necmettin Erbakan, Şevket Kazan, Ahmet Tekdal, Şevki Yılmaz, Hasan Hüseyin Ceylan and İbrahim Halil Çelik of their MP status, in accordance with Article 84 of the Constitution. It found that these persons, by their words and deeds, had caused Refah's dissolution. The Constitutional Court also banned them for five years from becoming founding members, ordinary members, leaders or auditors of any other political party, pursuant to Article 69 § 8 of the Constitution.

43. Judges Haşim Kılıç and Sacit Adalı expressed dissenting opinions stating, *inter alia*, that in their view the dissolution of Refah was not compatible either with the provisions of the Convention or with the case-law of the European Court of Human Rights on the dissolution of political parties. They observed that political parties which did not support the use of violence should be able to take part in political life and that in a pluralist system there should be room for debate about ideas thought to be disturbing or even shocking.

44. This judgment was published in the Official Gazette on 22 February 1998.

II. RELEVANT DOMESTIC LAW

A. The Constitution

45. 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 4

“No amendment may be made or proposed to the provisions of Article 1 of the Constitution providing that the State shall be a republic, the provisions of Article 2 concerning the characteristics of the Republic or the provisions of Article 3.”

Article 6

“Sovereignty resides unconditionally and unreservedly in the nation. ... Sovereign power shall not under any circumstances be delegated 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 beliefs, 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 organisation, or establishing by any other means a State political system based on such concepts and opinions.”

Article 24 § 4

“No one may exploit or abuse religion, religious feelings or things held sacred by religion in any manner whatsoever with a view to causing the social, economic, political or legal order of the State to be based on religious precepts, even if only in part, or for the purpose of securing political or personal interest or influence thereby.”

Article 68 § 4

"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 § 4

"... 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."

Article 69 § 6

"... A political party may not be dissolved on account of activities contrary to the provisions of Article 68 § 4 unless the Constitutional Court has held that the political party concerned constitutes a centre of such activities."

This provision of the Constitution was added on 23 July 1995.

Article 69 § 8

"... Members and leaders whose declarations and activities lead to the dissolution of a political party may not be founder members, leaders or auditors of another political party for a period of five years from the date on which the reasoned decision to dissolve the party is published in the Official Gazette ..."

Article 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 Article 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.”

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

46. 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

...

– 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.

...”

Section 90(1)

“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

...

(b) where 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 [This chapter (from section 78 to section 97), which concerns restrictions on the activities of political parties, provides, *inter alia*, that such activities may not be conducted to the detriment of the democratic constitutional order (including the sovereignty of the people and free elections), the nature of the nation State (including national independence, national unity and the principle of equality), and the secular nature of the State (including observance of the reforms carried out by Atatürk, the prohibition on exploiting religious feelings and the prohibition on religious demonstrations organised by political parties)], or where the chairman, vice-chairman or general secretary makes any written or oral statement contrary to those provisions.

...

(d) Where acts contrary to the provisions of Chapter 4 of this Law have been committed by organs, authorities or councils other than those mentioned in sub-paragraph (b), State Counsel shall, within two years of the act concerned, require the party in writing to disband those organs and/or authorities and/or councils. State Counsel shall order the permanent exclusion from the party of those members who

have been convicted for committing acts or making statements which contravene the provisions of Part 4.

State counsel shall institute proceedings for the dissolution of any political party which fails to comply with the instructions in his letter within thirty days of its service. If, within thirty days of service of State Counsel's application, the organs, authorities or councils concerned have been disbanded by the party, and the member or members in question have been permanently excluded, the dissolution proceedings shall lapse. If not, the Constitutional Court shall consider the case on the basis of the file and shall adjudicate after hearing, if necessary, the oral submissions of State Counsel, the representatives of the political party and all those capable of providing information about the case ..."

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 ... 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."

47. Paragraph 2 of section 103, which the Constitutional Court declared unconstitutional on 9 January 1998, prescribed the use of the procedure laid down in section 101(d) for determination of the question whether a political party had become a centre of anti-constitutional activities.

C. Article 163 of the Criminal Code, repealed on 12 April 1991

48. This provision was worded as follows:

"It shall be an offence, punishable by eight to fifteen years' imprisonment, to establish, found, organise, regulate, direct or administer associations with the intention of adapting the fundamental legal, social, economic or political bases of the State, even in part, to religious beliefs.

It shall be an offence, punishable by five to twelve years' imprisonment, to be a member of an association of that type or to incite another to become a member.

It shall be an offence, punishable by five to ten years' imprisonment, to spread propaganda in any form or to attempt to acquire influence by exploiting religion, religious feelings or objects regarded as sacred by religion in a manner contrary to the principle of secularism and with the intention of adapting the fundamental legal, social, economic or political bases of the State, even in part, to religious beliefs or of serving political interests.

It shall be an offence, punishable by two to five years' imprisonment, to spread propaganda in any form or to attempt to acquire influence, with the aim of serving

one's personal interests or obtaining advantages, by exploiting religion, religious feelings, objects regarded as sacred by religion or religious books.

Where the acts mentioned above are committed on the premises of the public administrative authorities, municipal councils, publicly owned undertakings whose capital, or part of whose capital, belongs to the State, trade unions, workers' organisations, schools, or institutions of higher education, or by civil servants, technicians, doorkeepers or members of such establishments, the penalty shall be increased by a third.

Where the acts mentioned in the third and fourth paragraphs above are committed by means of publications, the penalty shall be increased by a half."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

49. The applicants alleged that the dissolution of Refah Partisi (the Welfare Party) and the temporary prohibition barring its leaders – including Mr Necmettin Erbakan, Mr Şevket Kazan and Mr Ahmet Tekdal – from holding similar office in any other political party had infringed their right to freedom of association, guaranteed by Article 11 of the Convention, the relevant parts of which provide:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association ...

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. ..."

A. Whether there was an interference

50. The parties accepted that Refah's dissolution and the measures which accompanied it amounted to an interference with the applicants' exercise of their right to freedom of association. The Court takes the same view.

B. Whether the interference was justified

51. Such an interference will constitute a breach of Article 11 unless it was "prescribed by law", pursued one or more of the legitimate aims set out

in paragraph 2 of that provision and was “necessary in a democratic society” for the achievement of those aims.

1. *“Prescribed by law”*

(a) Arguments of the parties

(i) The applicants

52. The applicants submitted that the criteria applied by the Constitutional Court in establishing that Refah had become a centre of anti-constitutional activities were broader than those laid down by Law no. 2820 on the regulation of political parties. The provisions of Law no. 2820, which laid down stricter criteria in the matter, namely those concerning refusal to expel members who had been convicted of criminal offences, had been declared void by a decision of the Constitutional Court one week before its decision to dissolve Refah. Moreover, the former decision had been published in the Official Gazette after Refah’s dissolution.

53. The applicants argued that all of the above had made it impossible to foresee what criteria the Constitutional Court would apply in deciding that Refah had become a centre of anti-constitutional activities. The new version of Law no. 2820 had not been accessible to the applicants before Refah’s dissolution. They could not have been expected to organise their political activities in accordance with criteria that did not exist before the party’s dissolution. The applicants submitted that the former version of Law no. 2820 should have been applied in their case and that, after Refah’s exclusion of its members whose speeches had been cited by Principal State Counsel in his submissions, the Constitutional Court should have discontinued the dissolution proceedings.

(ii) The Government

54. The Government asked the Court to reject the applicants’ arguments. They observed that the interference in question was clearly prescribed by Articles 68 and 69 of the Constitution, which required political parties constituting centres of anti-constitutional activities, contrary to the principles of equality and of a secular, democratic republic in particular, to be dissolved by the Constitutional Court. They emphasised that one of the conditions for the dissolution of a political party, namely failure on its part to expel those of its members who had been convicted of criminal offences – a condition which had been added by the Law on the regulation of political parties to the definition of a “centre of anti-constitutional activities” – was no longer applicable in the case on account of changes to the Criminal Code. In other words, following the repeal of Article 163 of the Turkish Criminal Code, which concerned the dissemination of anti-secular ideas and

the creation of associations for that purpose, the procedure laid down in section 103(2) of the Law on the regulation of political parties had become devoid of purpose. The Government submitted that for that reason section 103(2) was manifestly unconstitutional in that its application would have made it impossible to give full effect to the Constitution, and in particular Article 69 § 6 thereof, which gave the Constitutional Court sole power to rule that a political party constituted a centre of anti-constitutional activities.

55. The Government further submitted that a judgment concerning a review of the constitutionality of the specific rule to be applied in a particular dispute did not need to be published in the Official Gazette before the commencement of that dispute in order to be operative. In such a situation the Constitutional Court adjourned the proceedings until it had settled the question of the constitutionality of a legislative provision it had to apply. That procedure was a well-established practice of the Turkish Constitutional Court and of the higher courts in a number of other European countries.

(b) The Court's assessment

56. The Court must first consider whether the applicants are estopped from submitting this argument, since they accepted in their additional observations to the Chamber and at the hearing before the Chamber that the measures complained of were in accordance with domestic law, and in particular with the Constitution. In its judgment the Chamber noted that the parties agreed "that the interference concerned was 'prescribed by law', the measures imposed by the Constitutional Court being based on Articles 68, 69 and 84 of the Constitution and sections 101 and 107 of Law no. 2820 on the regulation of political parties".

However, the Court points out that the "case" referred to the Grand Chamber embraces in principle all aspects of the application previously examined by the Chamber in its judgment, the scope of its jurisdiction in the "case" being limited only by the Chamber's decision on admissibility. It does not exclude the possibility of estoppel where one of the parties breaks good faith through a radical change of position. However, that has not occurred in the instant case, as the applicants presented in their initial applications the main lines of their argument on this point. They are therefore not estopped from raising the issue now (see, *mutatis mutandis*, *K. and T. v. Finland* [GC], no. 25702/94, §§ 139-41, ECHR 2001-VII; *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 34, ECHR 2002-IV; and *Göç v. Turkey* [GC], no. 36590/97, §§ 35-37, ECHR 2002-V).

57. As regards the accessibility of the provisions in issue and the foreseeability of their effects, the Court reiterates that the expression "prescribed by law" requires firstly that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with

sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Experience shows, however, that it is impossible to attain absolute precision in the framing of laws, particularly in fields in which the situation changes according to the evolving views of society. A law which confers a discretion is not in itself inconsistent with this requirement, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference (see *Müller and Others v. Switzerland*, judgment of 24 May 1988, Series A no. 133, p. 20, § 29; *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, pp. 21-22, § 45; and *Margareta and Roger Andersson v. Sweden*, judgment of 25 February 1992, Series A no. 226-A, p. 25, § 75). The Court also accepts that the level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the status of those to whom it is addressed. It is, moreover, primarily for the national authorities to interpret and apply domestic law (see *Vogt v. Germany*, 26 September 1995, Series A no. 323, p. 24, § 48).

58. In the instant case the Court observes that the dispute under domestic law concerned the constitutionality of the activities of a political party and fell within the jurisdiction of the Constitutional Court. The written law most relevant to the question whether the interference was "prescribed by law" is the Turkish Constitution.

59. The parties did not dispute that activities contrary to the principles of equality and respect for a democratic, secular republic were undoubtedly unconstitutional under Article 68 of the Constitution. Nor did they deny that the Constitutional Court had sole jurisdiction, on an application by Principal State Counsel, to dissolve a political party which had become a centre of activities contrary to Article 68 of the Constitution. Moreover, Article 69 of the Constitution (amended in 1995) explicitly confirms that the Constitutional Court alone is empowered to determine whether a political party constitutes a centre of anti-constitutional activities. The Court notes that Refah's MPs took part in the work of the parliamentary committee concerned and the debate in the Grand National Assembly on the 1995 amendments to the Constitution (see paragraph 11 above).

60. Furthermore, the fact that on 12 April 1991 anti-secular activities ceased to be punishable under the criminal law is not disputed by either party. The Court notes that, as the Turkish Constitutional Court explained in its judgment of 9 January 1998, there thus resulted a divergence between the Law on the regulation of political parties and the Constitution, in that the requirement in section 103(2) of the Law on the regulation of political parties that in order for the political party concerned to constitute a "centre

of anti-constitutional activities" it had to have refused to expel those of its members who had been convicted of criminal offences, taken together with the amendments to the Criminal Code of 12 April 1991, had rendered meaningless the Constitutional Court's power to dissolve political parties which constituted centres of anti-secular activities, even though that power was clearly conferred by Articles 68 § 4 and 69 §§ 4 and 6 of the Constitution.

61. It remains to be determined whether the applicants must have been aware of the possibility of a direct application of the Constitution in their case and could thus have foreseen the risks they ran through their party's anti-secular activities or through their refusal to distance themselves from that type of activity, without the procedure laid down by section 103(2) of the Law on the regulation of political parties being followed.

In order to be able to answer that question, the Court must first consider the relevant particularities of the legal background against which the facts of the case took place, as set out in the judgment of the Turkish Constitutional Court and not contested by the parties. The Turkish Constitution cannot be amended by ordinary legislation and takes precedence over statute law; a conflict between the Constitution's provisions and those of ordinary legislation is resolved in the Constitution's favour. In addition, the Constitutional Court has the power and the duty to review the constitutionality of legislation. Where in a particular case there is a discrepancy between the provisions of the applicable statute law and those of the Constitution, as happened in the instant case, the Constitutional Court is clearly required to give precedence to the provisions of the Constitution, disregarding the unconstitutional provisions of the relevant legislation.

62. The Court next takes into account the applicants' status as the persons to whom the relevant legal instruments were addressed. Refah was a large political party which had legal advisers conversant with constitutional law and the rules governing political parties. Mr Necmettin Erbakan, Mr Şevket Kazan and Mr Ahmet Tekdal were also experienced politicians. As members of the Turkish parliament they had taken part in parliamentary discussions and procedures concerning the amendments to the Constitution, during which the Constitutional Court's power to rule that a party had become a centre of anti-constitutional activities and the discrepancy between the new text of the Constitution and Law no. 2820 were mentioned. In addition, Mr Şevket Kazan and Mr Ahmet Tekdal were lawyers by profession (see paragraphs 10-11 above).

63. That being so, the Court considers that the applicants were reasonably able to foresee that they ran the risk of proceedings to dissolve Refah if the party's leaders and members engaged in anti-secular activities, and that the fact that the steps laid down in section 103(2) of Law no. 2820 were not taken, having become inapplicable as a result of the 1991 changes to the Criminal Code's provisions on anti-secular activities, could not

prevent implementation of the dissolution procedure required by the Turkish Constitution.

64. Consequently, the interference was "prescribed by law".

2. *Legitimate aim*

65. The Government submitted that the interference complained of pursued several legitimate aims, namely protection of public safety, national security and the rights and freedoms of others and the prevention of crime.

66. The applicants accepted in principle that protection of public safety and the rights and freedoms of others and the prevention of crime might depend on safeguarding the principle of secularism. However, they submitted that in pleading those aims the Government sought to conceal the underlying reasons which had led to Refah's dissolution. In reality, they argued, this had been the aim of major business concerns and the military, whose interests were threatened by Refah's economic policy, involving a reduction of the national debt to zero.

67. The Court considers that the applicants have not adduced sufficient evidence to establish that Refah was dissolved for reasons other than those cited by the Constitutional Court. Taking into account the importance of the principle of secularism for the democratic system in Turkey, it considers that Refah's dissolution pursued several of the legitimate aims listed in Article 11, namely protection of national security and public safety, prevention of disorder or crime and protection of the rights and freedoms of others.

3. *"Necessary in a democratic society"*

(a) Arguments of the parties

(i) The applicants

68. The applicants submitted in the first place that the criticisms that had been levelled at Refah on the basis of speeches made several years before were not nearly sufficient to prove that the party constituted a threat to secularism and democracy in Turkey at the time when the dissolution proceedings were instituted against it.

69. They further observed that Refah had found itself in power thirteen years after its foundation. With its millions of members it had had a long political existence and had taken on many responsibilities in local and central government. In order to determine whether the party's dissolution was necessary, the Court should assess all the factors that had led to the decision and all of the party's activities since it had come into existence.

70. The applicants further emphasised the fact that Refah had been in power for a year, from June 1996 to July 1997, during which time it could

have tabled draft legislation to introduce a regime based on Islamic law. But it had done nothing of the sort. The applicants submitted that "rigorous" European supervision on the Court's part would have shown that Refah complied with democratic principles.

71. As regards the imputability to Refah of the statements and acts cited in the dissolution judgment, the applicants maintained that where these acts and speeches were attributable to members who had been expelled from the party for that very reason they could not engage Refah's responsibility. The remarks of Refah's chairman, Mr Necmettin Erbakan, had to be interpreted in context, in the light of the full text of the speeches from which they had been extracted. No apologia for violence could be discerned in those speeches.

72. With regard to the theory of a plurality of legal systems, the applicants pointed out that Mr Necmettin Erbakan's speeches on that point were isolated and had been made in 1993. It was not the policy of Refah, as a political party, to introduce a plurality of legal systems, but at all events what Mr Necmettin Erbakan had proposed was only the introduction of a "civil-law" system, based on the freedom to enter into contracts, which would not have affected the general sphere of public law. Frustrating such a policy in the name of the special role of secularism in Turkey amounted to discrimination against Muslims who wished to conduct their private lives in accordance with the precepts of their religion.

73. On the question whether Refah sought to introduce a regime based on sharia, the applicants observed in the first place that there was no reference in Refah's constitution or its programme to either sharia or Islam. Secondly, they submitted that analysis of the speeches made by Refah's leaders did not establish that it was the party's policy to introduce sharia in Turkey. The desire to see sharia introduced in Turkey, as expressed by certain MPs who had subsequently been expelled from Refah, could not be attributed to the party as a whole. In any case, the proposal to introduce sharia and the plan to establish a plurality of legal systems were incompatible, and the Constitutional Court had been mistaken in accusing Refah of supporting both proposals simultaneously.

74. Moreover, in the applicants' submission, the concept of a "just order", which had been mentioned in certain speeches by party members, was not a reference to divine order, contrary to what had been stated in the Chamber's judgment. Many theoreticians had used the same term in order to describe their ideal society without giving it any religious connotation.

75. The applicants further disputed the statement in paragraph 72 of the Chamber's judgment that "It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia ...". They submitted that such a statement could lead to a distinction between "Christian democrats" and "Muslim democrats" and constitute discrimination against the 150 million Muslims in a total

European population of 800 million. In any event, they considered that the question did not fall within the Court's jurisdiction.

76. As regards recourse to force, the applicants maintained that even though some Refah members had mentioned such a possibility in their speeches, no member of Refah had ever attempted to use force. The inescapable conclusion was that the acts and speeches criticised on this account did not at the time of the party's dissolution represent a real danger for secularism in Turkey. Certain members who had made such speeches had been expelled from Refah. One of them had been convicted just before the dissolution, so that Refah had not had time to expel him before being dissolved. The other speeches for which Refah's leaders had been criticised had been made before the party came to power.

77. Lastly, the applicants submitted that the interference in issue was not proportionate to the aims pursued. They laid particular emphasis on the harshness of dissolving any political party on account of speeches made by some of its members, the scale of the political disabilities imposed on the three applicants, Mr Necmettin Erbakan, Mr Şevket Kazan and Mr Ahmet Tekdal, and the heavy financial losses suffered by Refah following its dissolution.

(ii) The Government

78. On the question whether Refah presented a danger at the time of its dissolution, the Government observed that the party had never exercised power alone and had therefore never had an opportunity to put its plan of setting up a theocratic State into practice. They submitted that if Refah had been the sole party in power it would have been quite capable of implementing its policy and thus putting an end to democracy.

79. The Government further submitted that the speeches criticised by the Constitutional Court were imputable to Refah. They pointed out that Article 4 of the party's constitution provided for the exclusion of members responsible for acts contrary to the decisions of its executive organs; under Article 5 of the constitution members who committed acts contrary to the party's constitution and programme were liable to the same penalty. The Government asserted that these provisions had never been applied to the Refah members guilty of the offending acts and statements.

80. Moreover, the plan to introduce a plurality of legal systems, which had never been abandoned by Refah, was clearly incompatible with the principle of non-discrimination, which was enshrined in the Convention and was one of the fundamental principles of democracy.

81. With regard to the question whether Refah supported the introduction of sharia in Turkey, the Government observed that it was not the party's official programme which caused a problem but the fact that certain aspects of the activities and speeches of Refah's leaders unambiguously indicated that the party would seek to introduce sharia if it

held power alone. They pointed out that the concept of a "just order", mentioned by Refah, had formed the basis for its campaign in the 1995 general election. In explaining the concept of a "just order" in the context of that propaganda, Refah's leaders had clearly been referring to an order based on sharia.

82. The Government endorsed the opinion expressed by the Constitutional Court and in paragraph 72 of the Chamber's judgment that sharia is hard to reconcile with democracy and the Convention system. A theocratic State could not be a democratic State, as could be seen from Turkish history during the Ottoman period, among other examples. The Government mentioned a number of instances of incompatibility between the main rules of sharia and the rights and freedoms guaranteed by the Convention.

83. The Government did not believe that Refah was content to interpret the principle of secularism differently. In their submission, the party wished to do away with that principle altogether. This was evidenced by the submissions made on Refah's behalf during the latest debates on amendment of the Constitution, since Refah had quite simply proposed deleting the reference in the Constitution to the principle of secularism.

84. As to the possibility of using force as a method of political struggle, the Government cited the statements of Refah members who advocated the use of violence in order to resist certain government policies or to gain power and retain it. They submitted that a number of acts and speeches by Refah members constituted incitement to a popular uprising and the generalised violence characterising any "holy war".

85. The Government further observed that at the material time radical Islamist groups such as Hizbullah were carrying out numerous acts of terrorism in Turkey. It was also at that time that Refah members were advocating Islamic fundamentalism in their speeches, one example being a visit made by one of the applicants, Mr Şevket Kazan, the Minister of Justice at the time, to a mayor who had been arrested for organising a "Jerusalem evening" in a room decorated with posters showing the leaders of the terrorist organisations Hamas and Hizbullah.

(b) The Court's assessment

(i) General principles

(α) Democracy and political parties in the Convention system

86. On the question of the relationship between democracy and the Convention, the Court has already ruled, in *United Communist Party of Turkey and Others v. Turkey* (judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, pp. 21-22, § 45), as follows:

> "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."

87. The Court has also confirmed on a number of occasions the primordial role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 11 and also in Article 10 of the Convention.

In *United Communist Party of Turkey and Others*, cited above, it stated that it found even more persuasive than the wording of Article 11 the fact that political parties were a form of association essential to the proper functioning of democracy (p. 17, § 25). In view of the role played by political parties, any measure taken against them affected both freedom of association and, consequently, democracy in the State concerned (p. 18, § 31).

It is in the nature of the role they play that political parties, the only bodies which can come to power, also have the capacity to influence the whole of the regime in their countries. By the proposals for an overall societal model which they put before the electorate and by their capacity to implement those proposals once they come to power, political parties differ from other organisations which intervene in the political arena.

88. Moreover, the Court has previously noted that protection of opinions and the freedom to express them within the meaning of Article 10 of the Convention is one of the objectives of the freedoms of assembly and association 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 (ibid., pp. 20-21, §§ 42-43).

89. The Court considers that 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). Inasmuch as their activities form part of a collective exercise of the freedom of expression, political parties are also entitled to seek the protection of Article 10 of the Convention (see *United Communist Party of Turkey and Others*, cited above, pp. 20-21, § 43).

(β) Democracy and religion in the Convention system

90. For the purposes of the present case, the Court also refers to its case-law concerning the place of religion in a democratic society and a democratic State. It reiterates that, as protected by Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

91. Moreover, in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, p. 18, § 33). The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 84, ECHR 2000-VII) and that it requires the State to ensure mutual tolerance between opposing groups (see, *mutatis mutandis*, *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 123, ECHR 2001-XII).

92. The Court's established case-law confirms this function of the State. It has held that in a democratic society the State may limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety (see *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V).

While freedom of religion is in the first place a matter of individual conscience, it also implies freedom to manifest one's religion alone and in private or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists a number of forms which manifestation of a religion or belief may take, namely worship, teaching, practice and observance. Nevertheless, it does not protect every act motivated or influenced by a religion or belief (see *Kalaç v. Turkey*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1209, § 27).

The obligation for a teacher to observe normal working hours which, he asserts, clash with his attendance at prayers, may be compatible with the freedom of religion (see *X v. the United Kingdom*, no. 8160/78, Commission decision of 12 March 1981, Decisions and Reports (DR) 22, p. 27), as may the obligation requiring a motorcyclist to wear a crash helmet, which in his view is incompatible with his religious duties (see *X v. the United Kingdom*, no. 7992/77, Commission decision of 12 July 1978, DR 14, p. 234).

93. In applying the above principles to Turkey the Convention institutions have expressed the view that the principle of secularism is certainly one of the fundamental principles of the State which are in harmony with the rule of law and respect for human rights and democracy. An attitude which fails to respect that principle will not necessarily be accepted as being covered by the freedom to manifest one's religion and will not enjoy the protection of Article 9 of the Convention (see the opinion of the Commission, expressed in its report of 27 February 1996, in *Kalaç*, cited above, p. 1215, § 44, and, *mutatis mutandis*, p. 1209, §§ 27-31).

94. In order to perform its role as the neutral and impartial organiser of the exercise of religious beliefs, the State may decide to impose on its serving or future civil servants, who will be required to wield a portion of its sovereign power, the duty to refrain from taking part in the Islamic fundamentalist movement, whose goal and plan of action is to bring about the pre-eminence of religious rules (see, *mutatis mutandis*, *Yanasik v. Turkey*, no. 14524/89, Commission decision of 6 January 1993, DR 74, p. 14, and *Kalaç*, cited above, p. 1209, § 28).

95. In a country like Turkey, where the great majority of the population belong to a particular religion, measures taken in universities to prevent certain fundamentalist religious movements from exerting pressure on students who do not practise that religion or on those who belong to another religion may be justified under Article 9 § 2 of the Convention. In that context, secular universities may regulate manifestation of the rites and symbols of the said religion by imposing restrictions as to the place and manner of such manifestation with the aim of ensuring peaceful co-existence between students of various faiths and thus protecting public order and the beliefs of others (see *Karaduman v. Turkey*, no. 16278/90, Commission decision of 3 May 1993, DR 74, p. 93).

(γ) The possibility of imposing restrictions, and rigorous European supervision

96. The freedoms guaranteed by Article 11, and by Articles 9 and 10 of the Convention, cannot deprive the authorities of a State in which an association, through its activities, jeopardises that State's institutions, of the right to protect those institutions. In this connection, the Court points out that it has previously held that some compromise between the requirements of defending democratic society and individual rights is inherent in the Convention system. For there to be a compromise of that sort any intervention by the authorities must be in accordance with paragraph 2 of Article 11 – a matter which the Court considers below. Only when that review is complete will the Court be in a position to decide, in the light of all the circumstances of the case, whether Article 17 of the Convention should be applied (see *United Communist Party of Turkey and Others*, cited above, p. 18, § 32).

97. The Court has also defined as follows the limits within which political organisations 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."

98. On that point, the Court considers that a political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic; 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 fails to respect 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 *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II, and, *mutatis mutandis*, the following judgments: *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 97, ECHR 2001-IX, and *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, pp. 1256-57, §§ 46-47).

99. The possibility cannot be excluded that a political party, in pleading the rights enshrined in Article 11 and also in Articles 9 and 10 of the Convention, might attempt to derive therefrom the right to conduct what amounts in practice to activities intended to destroy the rights or freedoms

set forth in the Convention and thus bring about the destruction of democracy (see *Communist Party (KPD) v. Germany*, no. 250/57, Commission decision of 20 July 1957, Yearbook 1, p. 222). In view of the very clear link between the Convention and democracy (see paragraphs 86-89 above), no one must be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society. Pluralism and democracy are based on a compromise that requires various concessions by individuals or groups of individuals, who must sometimes agree to limit some of the freedoms they enjoy in order to guarantee greater stability of the country as a whole (see, *mutatis mutandis*, *Petersen v. Germany* (dec.), no. 39793/98, ECHR 2001-XII).

In that context, the Court considers that it is not at all improbable that totalitarian movements, organised in the form of political parties, might do away with democracy, after prospering under the democratic regime, there being examples of this in modern European history.

100. The Court reiterates, however, that 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. Although it is not for the Court to take the place of the national authorities, which are better placed than an international court to decide, for example, the appropriate timing for interference, it must exercise rigorous supervision embracing both the law and the decisions applying it, including those given by independent courts. Drastic measures, such as the dissolution of an entire political party and a disability barring its leaders from carrying on any similar activity for a specified period, may be taken only in the most serious cases (see the following judgments: *United Communist Party of Turkey and Others*, cited above, p. 22, § 46; *Socialist Party and Others*, cited above, p. 1258, § 50; and *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 45, ECHR 1999-VIII). Provided that it satisfies the conditions set out in paragraph 98 above, a political party animated by the moral values imposed by a religion cannot be regarded as intrinsically inimical to the fundamental principles of democracy, as set forth in the Convention.

(δ) Imputability to a political party of the acts and speeches of its members

101. The Court further considers that the constitution and programme of a political party cannot be taken into account as the sole criterion for determining its objectives and intentions. The political experience of the Contracting States has shown that in the past political parties with aims contrary to the fundamental principles of democracy have not revealed such aims in their official publications until after taking power. That is why the

Court has always pointed out that a party's political programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the actions of the party's leaders and the positions they defend. Taken together, these acts and stances may be relevant in proceedings for the dissolution of a political party, provided that as a whole they disclose its aims and intentions (see *United Communist Party of Turkey and Others*, cited above, p. 27, § 58, and *Socialist Party and Others*, cited above, pp. 1257-58, § 48).

(ε) The appropriate timing for dissolution

102. In addition, the Court considers that a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent. The Court accepts that where the presence of such a danger has been established by the national courts, after detailed scrutiny subjected to rigorous European supervision, a State may "reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime" (see the Chamber's judgment, § 81).

103. The Court takes the view that such a power of preventive intervention on the State's part is also consistent with Contracting Parties' positive obligations under Article 1 of the Convention to secure the rights and freedoms of persons within their jurisdiction. Those obligations relate not only to any interference that may result from acts or omissions imputable to agents of the State or occurring in public establishments but also to interference imputable to private individuals within non-State entities (see, for example, with regard to the State's obligation to make private hospitals adopt appropriate measures to protect life, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I). A Contracting State may be justified under its positive obligations in imposing on political parties, which are bodies whose *raison d'être* is to accede to power and direct the work of a considerable portion of the State apparatus, the duty to respect and safeguard the rights and freedoms guaranteed by the Convention and the obligation not to put forward a political programme in contradiction with the fundamental principles of democracy.

(ζ) Overall examination

104. In the light of the above considerations, the Court's overall examination of the question whether the dissolution of a political party on account of a risk of democratic principles being undermined met a "pressing social need" (see, for example, *Socialist Party and Others*, cited above,

p. 1258, § 49) must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the acts and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a "democratic society".

105. The overall examination of the above points that the Court must conduct also has to take account of the historical context in which the dissolution of the party concerned took place and the general interest in preserving the principle of secularism in that context in the country concerned to ensure the proper functioning of "democratic society" (see, *mutatis mutandis*, *Petersen*, cited above).

(ii) Application of the above principles to the present case

106. The Court will devote the first part of its examination to the question whether Refah's dissolution and the secondary penalties imposed on the other applicants met a "pressing social need". It will then determine, if the case arises, whether those penalties were "proportionate to the legitimate aims pursued".

(α) Pressing social need

The appropriate timing for dissolution

107. The Court will first determine whether Refah could have presented a threat to the democratic regime at the time when it was dissolved.

It observes in that connection that Refah was founded in 1983, took part in a number of general and local election campaigns and obtained approximately 22% of the votes in the 1995 general election, which gave it 158 seats in the Grand National Assembly (out of a total of 450 at the material time). After sharing power in a coalition government, Refah obtained about 35% of the votes in the local elections of November 1996. According to an opinion poll carried out in January 1997, if a general election had been held at that time Refah would have received 38% of the votes. According to the forecasts of the same opinion poll, Refah could have obtained 67% of the votes in the general election likely to be held about four years' later (see paragraph 11 above). Notwithstanding the uncertain nature of some opinion polls, those figures bear witness to a considerable rise in Refah's influence as a political party and its chances of coming to power alone.

108. The Court accordingly considers that at the time of its dissolution Refah had the real potential to seize political power without being restricted by the compromises inherent in a coalition. If Refah had proposed a

programme contrary to democratic principles, its monopoly of political power would have enabled it to establish the model of society envisaged in that programme.

109. As regards the applicants' argument that Refah was punished for speeches by its members made several years before its dissolution, the Court considers that the Turkish courts, when reviewing the constitutionality of Refah's acts, could legitimately take into consideration the progression over time of the real risk that the party's activities represented for the principles of democracy. The same applies to the review of Refah's compliance with the principles set forth in the Convention.

Firstly, the programme and policies of a political party may become clear through the accumulation of acts and speeches by its members over a relatively long period. Secondly, the party concerned may, over the years, increase its chances of gaining political power and implementing its policies.

110. While it can be considered, in the present case, that Refah's policies were dangerous for the rights and freedoms guaranteed by the Convention, the real chances that Refah would implement its programme after gaining power made that danger more tangible and more immediate. That being the case, the Court cannot criticise the national courts for not acting earlier, at the risk of intervening prematurely and before the danger concerned had taken shape and become real. Nor can it criticise them for not waiting, at the risk of putting the political regime and civil peace in jeopardy, for Refah to seize power and swing into action, for example by tabling bills in Parliament, in order to implement its plans.

In short, the Court considers that in electing to intervene at the time when they did in the present case the national authorities did not go beyond the margin of appreciation left to them under the Convention.

Imputability to Refah of the acts and speeches of its members

111. The parties before the Court agreed that neither in its constitution nor in the coalition programme it had negotiated with another political party, the True Path Party (Doğru Yol Partisi), had Refah proposed altering Turkey's constitutional settlement in a way that would be contrary to the fundamental principles of democracy. Refah was dissolved on the basis of the statements made and stances adopted by its chairman and some of its members.

112. Those statements and stances were made or adopted, according to the Constitutional Court, by seven of Refah's leading figures, namely its chairman, Mr Necmettin Erbakan, its two vice-chairmen, Mr Şevket Kazan and Mr Ahmet Tekdal, three Refah members of Turkey's Grand National Assembly, Mr Şevki Yılmaz, Mr Hasan Hüseyin Ceylan and Mr İbrahim Halil Çelik, and the mayor of the city of Konya, Mr Recai Karatepe, elected on a Refah ticket.

113. The Court considers that the statements and acts of Mr Necmettin Erbakan, in his capacity as chairman of Refah or as the Prime Minister elected on account of his position as the leader of his party, could incontestably be attributed to Refah. The role of a chairman, who is frequently a party's emblematic figure, is different in that respect from that of a simple member. Remarks on politically sensitive subjects or positions taken up by the chairman of a party are perceived by political institutions and by public opinion as acts reflecting the party's views, rather than his personal opinions, unless he declares that this is not the case. The Court observes on that point that Mr Erbakan never made it clear that his statements and stances did not reflect Refah's policy or that he was only expressing his personal opinion.

114. The Court considers that the speeches and stances of Refah's vice-chairmen could be treated in the same way as those of its chairman. Save where otherwise indicated, remarks by such persons on political questions are imputable to the party they represent. That applies in the present case to the remarks of Mr Şevket Kazan and Mr Ahmet Tekdal.

115. Moreover, the Court considers that, inasmuch as the acts and remarks of the other Refah members who were MPs or held local government posts formed a whole which disclosed the party's aims and intentions and projected an image, when viewed in the aggregate, of the model of society it wished to set up, these could also be imputed to Refah. These acts or remarks were likely to influence potential voters by arousing their hopes, expectations or fears, not because they were attributable to individuals but because they had been done or made on Refah's behalf by MPs and a mayor, all of whom had been elected on a Refah platform. Such acts and speeches were potentially more effective than abstract forms of words written in the party's constitution and programme in achieving any unlawful ends. The Court considers that such acts and speeches are imputable to a party unless it distances itself from them.

But a short time later Refah presented those responsible for these acts and speeches as candidates for important posts, such as member of Parliament or mayor of a large city, and distributed one of the offending speeches to its local branches to serve as material for the political training of its members. Before the proceedings to dissolve Refah were instituted no disciplinary action was taken within the party against those who had made the speeches concerned on account of their activities or public statements and Refah never criticised their remarks. The Court accepts the Turkish Constitutional Court's conclusion on this point to the effect that Refah had decided to expel those responsible for the acts and speeches concerned in the hope of avoiding dissolution and that the decision was not made freely, as the decisions of leaders of associations should be if they are to be recognised under Article 11 (see, *mutatis mutandis*, *Freedom and Democracy Party (ÖZDEP)*, cited above, § 26).

The Court accordingly concludes that the acts and speeches of Refah's members and leaders cited by the Constitutional Court in its dissolution judgment were imputable to the whole party.

The main grounds for dissolution cited by the Constitutional Court

116. The Court considers on this point that among the arguments for dissolution pleaded by Principal State Counsel at the Court of Cassation those cited by the Constitutional Court as grounds for its finding that Refah had become a centre of anti-constitutional activities can be classified into three main groups: (i) the arguments that Refah intended to set up a plurality of legal systems, leading to discrimination based on religious beliefs; (ii) the arguments that Refah intended to apply sharia to the internal or external relations of the Muslim community within the context of this plurality of legal systems; and (iii) the arguments based on the references made by Refah members to the possibility of recourse to force as a political method. The Court must therefore limit its examination to those three groups of arguments cited by the Constitutional Court.

(a) The plan to set up a plurality of legal systems

117. The Court notes that the Constitutional Court took account in this connection of two declarations by the applicant Mr Necmettin Erbakan, Refah's chairman, on 23 March 1993 in Parliament and on 10 October 1993 at a Refah party conference (see paragraph 28 above). In the light of its considerations on the question of the appropriate timing for dissolution of the party (see paragraphs 107-10 above) and on the imputability to Refah of Mr Necmettin Erbakan's speeches (see paragraph 113 above), it takes the view that these two speeches could be regarded as reflecting one of the policies which formed part of Refah's programme, even though the party's constitution said nothing on the subject.

118. With regard to the applicants' argument that when Refah was in power it had never taken any concrete steps to implement the idea behind this proposal, the Court considers that it would not have been realistic to wait until Refah was in a position to include such objectives in the coalition programme it had negotiated with a political party of the centre-right. It merely notes that a plurality of legal systems was a policy which formed part of Refah's programme.

119. The Court sees no reason to depart from the Chamber's conclusion that a plurality of legal systems, as proposed by Refah, cannot be considered to be compatible with the Convention system. In its judgment, the Chamber gave the following reasoning:

> "70. ... the Court considers that Refah's proposal that there should be a plurality of legal systems would introduce into all legal relationships a distinction between individuals grounded on religion, would categorise everyone according to his religious

beliefs and would allow him rights and freedoms not as an individual but according to his allegiance to a religious movement.

The Court takes the view that such a societal model cannot be considered compatible with the Convention system, for two reasons.

Firstly, it would do away with the State's role as the guarantor of individual rights and freedoms and the impartial organiser of the practice of the various beliefs and religions in a democratic society, since it would oblige individuals to obey, not rules laid down by the State in the exercise of its above-mentioned functions, but static rules of law imposed by the religion concerned. But the State has a positive obligation to ensure that everyone within its jurisdiction enjoys in full, and without being able to waive them, the rights and freedoms guaranteed by the Convention (see, *mutatis mutandis*, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 14, § 25).

Secondly, such a system would undeniably infringe the principle of non-discrimination between individuals as regards their enjoyment of public freedoms, which is one of the fundamental principles of democracy. A difference in treatment between individuals in all fields of public and private law according to their religion or beliefs manifestly cannot be justified under the Convention, and more particularly Article 14 thereof, which prohibits discrimination. Such a difference in treatment cannot maintain a fair balance between, on the one hand, the claims of certain religious groups who wish to be governed by their own rules and on the other the interest of society as a whole, which must be based on peace and on tolerance between the various religions and beliefs (see, *mutatis mutandis*, the judgment of 23 July 1968 in the "Belgian linguistic" case, Series A no. 6, pp. 33-35, §§ 9 and 10, and *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, pp. 35-36, § 72).

(b) Sharia

120. The Court observes in the first place that the intention to set up a regime based on sharia was explicitly portended in the following remarks cited by the Constitutional Court, which had been made by certain members of Refah, all of whom were MPs:

– In a television interview broadcast on 24 November 1996 Mr Hasan Hüseyin Ceylan, Refah MP for the province of Ankara, said that sharia was the solution for the country (see paragraph 34 above);

– On 8 May 1997 Mr İbrahim Halil Çelik, Refah MP for the province of Şanlıurfa, said: "I will fight to the end to introduce sharia" (see paragraph 37 above);

– In April 1994 Mr Şevki Yılmaz, Refah MP for the province of Rize, urged believers to "call to account those who turn their backs on the precepts of the Koran and those who deprive Allah's Messenger of his jurisdiction in their country" and asserted: "Only 39% [of the rules] in the Koran are applied in this country. Six thousand five hundred verses have been quietly forgotten ..." He went on to say: "The condition to be met before prayer is the Islamisation of power. Allah says that, before mosques, it is the path of power which must be Muslim" and "The question Allah will

ask you is this: ‘Why, in the time of the blasphemous regime, did you not work for the construction of an Islamic State?’ Erbakan and his friends want to bring Islam to this country in the form of a political party. The prosecutor understood that clearly. If we could understand that as he did, the problem would be solved” (see paragraph 33 above).

121. The Court further notes the following remarks by Refah’s chairman and vice-chairman, on their desire to set up a “just order” or “order of justice” or “God’s order”, which the Constitutional Court took into consideration:

– On 13 April 1994 Mr Necmettin Erbakan said: “Refah will come to power and a just order [*adil dozen*] will be established” (see paragraph 31 above), and in a speech on 7 May 1996 he praised “those who contribute, with conviction, to the supremacy of Allah” (see paragraph 39 above);

– While on pilgrimage in 1993 Mr Ahmet Tekdal said: “If the people ... do not work hard enough to bring about the advent of ‘*hak nizami*’ [a just order or God’s order], ... they will be tyrannised by [renegades] and will eventually disappear ... they will not be able to give a satisfactory account of themselves to Allah, as they will not have worked to establish ‘*hak nizami*’ ” (see paragraph 35 above).

122. Even though these last two statements lend themselves to a number of different interpretations, their common denominator is that they both refer to religious or divine rules as the basis for the political regime which the speakers wished to bring into being. They betray ambiguity about those speakers’ attachment to any order not based on religious rules. In the light of the context created by the various views attributed to Refah’s leaders which the Constitutional Court cited in its judgment, for example on the question of the wearing of Islamic headscarves in the public sector or on the organisation of working hours in the civil service to fit in with the appointed times for prayers, the statements concerned could reasonably have been understood as confirming statements made by Refah MPs which revealed the party’s intention of setting up a regime based on sharia. The Court can therefore accept the Constitutional Court’s conclusion that these remarks and stances of Refah’s leaders formed a whole and gave a clear picture of a model conceived and proposed by the party of a State and society organised according to religious rules.

123. The Court concurs in the Chamber’s view that sharia is incompatible with the fundamental principles of democracy, as set forth in the Convention:

> “72. Like the Constitutional Court, the Court considers that sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it. The Court notes that, when read together, the offending statements, which contain explicit references to the introduction of sharia, are difficult to reconcile with the fundamental principles of democracy, as conceived in the Convention taken as a whole. It is difficult to declare one’s respect for democracy and

> human rights while at the same time supporting a regime based on sharia, which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts. ... In the Court's view, a political party whose actions seem to be aimed at introducing sharia in a State party to the Convention can hardly be regarded as an association complying with the democratic ideal that underlies the whole of the Convention."

124. The Court must not lose sight of the fact that in the past political movements based on religious fundamentalism have been able to seize political power in certain States and have had the opportunity to set up the model of society which they had in mind. It considers that, in accordance with the Convention's provisions, each Contracting State may oppose such political movements in the light of its historical experience.

125. The Court further observes that there was already an Islamic theocratic regime under Ottoman law. When the former theocratic regime was dismantled and the republican regime was being set up, Turkey opted for a form of secularism which confined Islam and other religions to the sphere of private religious practice. Mindful of the importance for survival of the democratic regime of ensuring respect for the principle of secularism in Turkey, the Court considers that the Constitutional Court was justified in holding that Refah's policy of establishing sharia was incompatible with democracy (see paragraph 40 above).

(c) Sharia and its relationship with the plurality of legal systems proposed by Refah

126. The Court will next examine the applicants' argument that the Chamber contradicted itself in holding that Refah supported introducing both a plurality of legal systems and sharia simultaneously.

It takes note of the Constitutional Court's considerations concerning the part played by a plurality of legal systems in the application of sharia in the history of Islamic law. These showed that sharia is a system of law applicable to relations between Muslims themselves and between Muslims and the adherents of other faiths. In order to enable the communities owing allegiance to other religions to live in a society dominated by sharia, a plurality of legal systems had also been introduced by the Islamic theocratic regime during the Ottoman Empire, before the Republic was founded.

127. The Court is not required to express an opinion in the abstract on the advantages and disadvantages of a plurality of legal systems. It notes, for the purposes of the present case, that – as the Constitutional Court observed – Refah's policy was to apply some of sharia's private-law rules to a large part of the population in Turkey (namely Muslims), within the framework of a plurality of legal systems. Such a policy goes beyond the freedom of individuals to observe the precepts of their religion, for example by organising religious wedding ceremonies before or after a civil marriage

(a common practice in Turkey) and according religious marriage the effect of a civil marriage (see, *mutatis mutandis*, *Serif v. Greece*, no. 38178/97, § 50, ECHR 1999-IX). This Refah policy falls outside the private sphere to which Turkish law confines religion and suffers from the same contradictions with the Convention system as the introduction of sharia (see paragraph 125 above).

128. Pursuing that line of reasoning, the Court rejects the applicants' argument that prohibiting a plurality of private-law systems in the name of the special role of secularism in Turkey amounted to establishing discrimination against Muslims who wished to live their private lives in accordance with the precepts of their religion.

It reiterates that freedom of religion, including the freedom to manifest one's religion by worship and observance, is primarily a matter of individual conscience, and stresses that the sphere of individual conscience is quite different from the field of private law, which concerns the organisation and functioning of society as a whole.

It has not been disputed before the Court that in Turkey everyone can observe in his private life the requirements of his religion. On the other hand, Turkey, like any other Contracting Party, may legitimately prevent the application within its jurisdiction of private-law rules of religious inspiration prejudicial to public order and the values of democracy for Convention purposes (such as rules permitting discrimination based on the gender of the parties concerned, as in polygamy and privileges for the male sex in matters of divorce and succession). The freedom to enter into contracts cannot encroach upon the State's role as the neutral and impartial organiser of the exercise of religions, faiths and beliefs (see paragraphs 91-92 above).

(d) The possibility of recourse to force

129. The Court takes into consideration under this heading the following remarks cited by the Constitutional Court and made by:

– Mr Necmettin Erbakan, on 13 April 1994, on the question whether power would be gained by violence or by peaceful means (whether the change would involve bloodshed or not – see paragraph 31 above);

– Mr Şevki Yılmaz, in April 1994, concerning his interpretation of jihad and the possibility for Muslims of arming themselves after coming to power (see paragraph 33 above);

– Mr Hasan Hüseyin Ceylan, on 14 March 1993, who insulted and threatened the supporters of a regime on the Western model (see paragraph 34 above);

– Mr Şükrü Karatepe, who, in his speech on 10 December 1996, advised believers to keep alive the rancour and hatred they felt in their hearts (see paragraph 36 above); and

– Mr İbrahim Halil Çelik, on 8 May 1997, who said he wanted blood to flow to prevent the closure of the theological colleges (see paragraph 37 above).

The Court also takes into account the visit by Mr Şevket Kazan, who was then the Minister of Justice, to a member of his party charged with incitement to hatred based on religious discrimination (see paragraph 38 above).

130. The Court considers that, whatever meaning is ascribed to the term "jihad" used in most of the speeches mentioned above (whose primary meaning is holy war and the struggle to be waged until the total domination of Islam in society is achieved), there was ambiguity in the terminology used to refer to the method to be employed to gain political power. In all of these speeches the possibility was mentioned of resorting "legitimately" to force in order to overcome various obstacles Refah expected to meet in the political route by which it intended to gain and retain power.

131. Furthermore, the Court endorses the following finding of the Chamber:

> "74. ...
>
> While it is true that [Refah's] leaders did not, in government documents, call for the use of force and violence as a political weapon, they did not take prompt practical steps to distance themselves from those members of [Refah] who had publicly referred with approval to the possibility of using force against politicians who opposed them. Consequently, Refah's leaders did not dispel the ambiguity of these statements about the possibility of having recourse to violent methods in order to gain power and retain it (see, *mutatis mutandis*, *Zana v. Turkey*, judgment of 25 November 1997, *Reports* 1997-VII, p. 2549, § 58)."

Overall examination of "pressing social need"

132. In making an overall assessment of the points it has just listed above in connection with its examination of the question whether there was a pressing social need for the interference in issue in the present case, the Court finds that the acts and speeches of Refah's members and leaders cited by the Constitutional Court were imputable to the whole of the party, that those acts and speeches revealed Refah's long-term policy of setting up a regime based on sharia within the framework of a plurality of legal systems and that Refah did not exclude recourse to force in order to implement its policy and keep the system it envisaged in place. In view of the fact that these plans were incompatible with the concept of a "democratic society" and that the real opportunities Refah had to put them into practice made the danger to democracy more tangible and more immediate, the penalty imposed on the applicants by the Constitutional Court, even in the context of the restricted margin of appreciation left to Contracting States, may reasonably be considered to have met a "pressing social need".

(β) Proportionality of the measure complained of

133. After considering the parties' arguments, the Court sees no good reason to depart from the following considerations in the Chamber's judgment:

> "82. ... The Court has previously held that the dissolution of a political party accompanied by a temporary ban prohibiting its leaders from exercising political responsibilities was a drastic measure and that measures of such severity might be applied only in the most serious cases (see the previously cited *Socialist Party and Others v. Turkey* judgment, p. 1258, § 51). In the present case it has just found that the interference in question met a 'pressing social need'. It should also be noted that after [Refah's] dissolution only five of its MPs (including the applicants) temporarily forfeited their parliamentary office and their role as leaders of a political party. The 152 remaining MPs continued to sit in Parliament and pursued their political careers normally. ... The Court considers in that connection that the nature and severity of the interference are also factors to be taken into account when assessing its proportionality (see, for example, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 64, ECHR 1999-IV)."

134. The Court also notes that the pecuniary damage alleged by the applicants was made up largely of a loss of earnings and is speculative in nature. In view of the low value of Refah's assets, their transfer to the Treasury can have no bearing on the proportionality of the interference in issue. Moreover, the Court observes that the prohibition barring three of the applicants, Mr Necmettin Erbakan, Mr Şevket Kazan and Mr Ahmet Tekdal, from engaging in certain types of political activity for a period of five years was temporary, and that, through their speeches and the stances they adopted in their capacity as the chairman and vice-chairmen of the party, they bear the main responsibility for Refah's dissolution.

It follows that the interference in issue in the present case cannot be regarded as disproportionate in relation to the aims pursued.

4. The Court's conclusion regarding Article 11 of the Convention

135. Consequently, following a rigorous review to verify that there were convincing and compelling reasons justifying Refah's dissolution and the temporary forfeiture of certain political rights imposed on the other applicants, the Court considers that those interferences met a "pressing social need" and were "proportionate to the aims pursued". It follows that Refah's dissolution may be regarded as "necessary in a democratic society" within the meaning of Article 11 § 2.

136. Accordingly, there has been no violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 9, 10, 14, 17 AND 18 OF THE CONVENTION

137. The applicants further alleged the violation of Articles 9, 10, 14, 17 and 18 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 ARTICLES 1 AND 3 OF PROTOCOL No. 1

138. The applicants further submitted that the consequences of Refah's dissolution, namely the confiscation of its assets and their transfer to the Treasury, and the ban preventing its leaders from participating in elections, had entailed breaches of Articles 1 and 3 of Protocol No. 1.

139. The Court notes that the measures complained of by the applicants were only secondary effects of Refah's dissolution, which, as the Court has found, did not breach Article 11. Accordingly, there is no cause to examine separately the complaints in question.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 11 of the Convention;

2. *Holds* that it is not necessary to examine separately the complaints under Articles 9, 10, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 13 February 2003.

Luzius WILDHABER
President

Paul MAHONEY
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Mr Ress joined by Mr Rozakis;

(b) concurring opinion of Mr Kovler.

L.W.
P.J.M.

CONCURRING OPINION OF JUDGE RESS JOINED BY JUDGE ROZAKIS

The only point on which I would like to clarify the reasoning of the judgment, as I interpret it, relates to paragraphs 97 and 98, where the Court refers to the limits under which political movements can continue to rely on the protection of the Convention while conducting their activities. In paragraph 97 of the judgment the Court refers to *United Communist Party of Turkey and Others v. Turkey* (judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 27, § 57) where the Court reiterated the characteristics of democracy and the available possibilities to resolve a country's problems – even irksome ones – through dialogue and other means of expression without recourse to violence. The Court then in paragraph 98 of the judgment says that a political party may campaign for a change in the law or the legal and constitutional structures of a State on two conditions: firstly, the means used to that end must be legal and democratic and secondly, the change proposed must itself be compatible with fundamental democratic principles.

Since this case is related to the dissolution of a political party for its activities and far-reaching political aims, one has to be careful with very general statements. These two paragraphs should not be understood to mean that the protection of the Convention is limited to situations where the political party has acted in every respect in conformity with the law. There are situations in between. The reference to the legality of means, in my view, cannot be interpreted in the sense that a political party, which on one occasion or another does not act fully in conformity with domestic law thereby loses its capacity to lay claim to the Convention's protection against penalties imposed against it, and in particular against dissolution. Not all minor violations of the law which occur in the course of political assemblies, or the conduct of one or another of a party's members or illegal situations relating to its internal order can be deemed to justify such a measure. The formulation in paragraph 98 of the judgment should in my view not be understood to exclude for more or less minor illegalities the application of the principle of proportionality in relation to sanctions such as dissolution of a party. In respect of a possible dissolution of the party the following sentence relating to a situation where party leaders incite to violence or put forward a political programme which fails to respect basic rules of democracy or which is even aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy is a more reliable guide. But even there one should be prudent and not overstep the limits set out in other decisions and judgments of the Court. It is difficult to give an exhaustive list of the rules of democracy, apart from the basic ones. It is without doubt correct to say that parties that aim at the destruction of democracy cannot enjoy protection against even such drastic measures as

dissolution. But whether the failure to respect this or that rule of democracy justifies dissolution or whether a less drastic measure is the only appropriate and adequate one is again a question that has to be judged with regard to the principle of proportionality. Furthermore, the last part relating to the flouting of the rights and freedoms recognised in a democracy must be seen in the context of the very basic rights and freedoms. In my view it cannot be interpreted to the effect that any campaign to change rights and freedoms recognised in a democracy amount to a situation where a political party would lose protection. In this respect also all depends on the specific rights and freedoms which a political party aims to change and furthermore what kind of change or modification is envisaged. So the very general sentences of paragraph 98 of the judgment need some further clarification and limitation in the light of the principle of proportionality and in the light of the judgments which are quoted at the end of that paragraph.

I have no doubt that the aims for which the applicant party and its prominent leaders stood and which they advocated rather vigorously are not in conformity with basic rules of democracy and justify the dissolution. The only point I wanted to make is that the Court's observation in paragraph 98 of the judgment must be read in the light of the other quoted judgments and within the interpretation that was given in these judgments, in particular *United Communist Party of Turkey and Others*, and not be taken for a general dictum, as its wording might appear to suggest.

CONCURRING OPINION OF JUDGE KOVLER

(Translation)

I concur for the most part in the Court's ruling that there has been no violation of Article 11 of the Convention in this specific case for the simple reason that some of the applicants' activities and statements were in contradiction with the principle of secularism, a pillar of Turkish democracy as conceived by Mustafa Kemal Atatürk and enshrined in the Constitution of the Republic of Turkey (particularly Articles 2 and 24 § 4), to which contradiction the State, as the guarantor of constitutional order, was obliged to react, taking account in particular of Articles 9 § 2 and 11 § 2 of the Convention.

What bothers me about some of the Court's findings is that in places they are unmodulated, especially as regards the extremely sensitive issues raised by religion and its values. I would prefer an international court to avoid terms borrowed from politico-ideological discourse, such as "Islamic fundamentalism" (paragraph 94 of the judgment), "totalitarian movements" (paragraph 99 of the judgment), "threat to the democratic regime" (paragraph 107 of the judgment), etc., whose connotations, in the context of the present case, might be too forceful.

I also regret that the Court, in reproducing the Chamber's conclusions (paragraph 119 of the judgment), missed the opportunity to analyse in more detail the concept of a plurality of legal systems, which is linked to that of legal pluralism and is well-established in ancient and modern legal theory and practice (see, in particular, the proceedings of the international congresses on customary law and legal pluralism organised by the International Union of Anthropological and Ethnological Sciences, and J. Griffiths: "What is legal pluralism?", *Journal of Legal Pluralism and Unofficial Law*, 1986, no. 24). Not only legal anthropology but also modern constitutional law accepts that under certain conditions members of minorities of all kinds may have more than one type of personal status (see, for example, P. Gannagé, "*Le pluralisme des statuts personnels dans les Etats multicommunautaires – Droit libanais et droits proche-orientaux*", Brussels, Editions Bruylant, 2001). Admittedly, this pluralism, which impinges mainly on an individual's private and family life, is limited by the requirements of the general interest. But it is of course more difficult in practice to find a compromise between the interests of the communities concerned and civil society as a whole than to reject the very idea of such a compromise from the outset.

This general remark also applies to the assessment to be made of sharia, the legal expression of a religion whose traditions go back more than a thousand years, and which has its fixed points of reference and its excesses, like any other complex system. In any case legal analysis should not

caricature polygamy (a form of family organisation which exists in societies other than Islamised peoples) by reducing it to ... “discrimination based on the gender of the parties concerned” (paragraph 128 of the judgment).

Lastly, I find the use of figures derived from opinion polls (paragraph 107 of the judgment), which would be natural in a political analysis, rather strange in a legal text which constitutes *res judicata*.