



Dissolution of the political party DTP was in breach of the Convention

In today's Chamber judgment¹ in the case of [Party for a Democratic Society \(DTP\) and Others v. Turkey](#) (applications nos. 3870/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights in respect of all the applicants, and

a violation of Article 3 of Protocol No. 1 to the Convention (right to free elections) in respect of Ms Tuğluk and Mr Türk.

The case concerned the dissolution of the Party for a Democratic Society ("the DTP", *Demokratik Toplum Partisi*), part of the pro-Kurdish left-wing political movement, and the forfeiture of the parliamentary mandates of certain of its members of parliament, including those of its co-presidents.

The Court found in particular that the reasons put forward by the Constitutional Court for ordering the DTP's dissolution, one of the main political actors which had argued in favour of a peaceful solution to the Kurdish problem, could not be regarded as sufficient to justify the interference in its right to freedom of association. The Court did not identify any DTP political project that was incompatible with the concept of a democratic society; it also considered that the speeches made by its two co-presidents were not such as to justify this dissolution, in so far as they had not encouraged the use of violence, armed resistance or insurrection. It noted, however, that taking such a measure on the ground that the party had not openly distanced itself from the acts or speeches of its members or local leaders that could be interpreted as indirect support for terrorism could reasonably be held to have met a "pressing social need". However, it considered that, having regard to the relatively limited political impact on public order or the protection of the rights and freedoms of others, this failure to act could not in itself amount to a reason justifying a sanction of such severity as the dissolution of an entire party.

The Court also held that the forfeiture of the parliamentary seats of Ms Tuğluk and Mr Türk, co-presidents of the DTP, on account of their speeches could not be considered proportionate to any legitimate aim, as this measure was incompatible with the very substance of their right to be elected and sit in parliament under Article 3 of Protocol No. 1 and infringed the sovereign power of the electorate who had elected them.

Principal facts

The applicants are, on the one hand, the Party for a Democratic Society ("the DTP", *Demokratik Toplum Partisi*) and, on the other, the party's co-presidents Aysel Tuğluk and Ahmet Türk, and individuals exercising various functions in the party, namely Sedat Yurtdaş, Halit Kahraman, Mehmet Salih Sağlam, Abdulkadir Fırat, Ahmet Ay, Bedri Fırat, Fehtah Dadaş and Hüseyin Bektaşoğlu, who were born in 1965, 1942, 1961, 1977, 1970, 1958, 1967, 1956, 1967 and 1944 respectively.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Founded on 9 November 2005, the DTP belonged to the movement of Turkish left-wing pro-Kurdish political parties. At the parliamentary elections of 22 July 2007, 21 independent candidates were elected in the constituencies of east and south-east Turkey, and joined the DTP following these elections. In the local elections of 29 March 2009 the DTP emerged as the fourth political force in the country, obtaining a national score of 5.7% and thus reinforcing its status as the leading party in south-east Turkey.

On 16 November 2007 the Principal State Counsel at the Court of Cassation applied to the Constitutional Court for the DTP to be dissolved and asked it to impose, in respect of members of this party who were found to have brought about its dissolution, a ban on becoming founding members, ordinary members, leaders or auditors of any other political party for five years.

On 11 December 2009 the Constitutional Court unanimously ordered the dissolution of the DTP, which entailed the liquidation of the party and the transfer of its assets to the Treasury. As an ancillary penalty, it decided to strip Ms Tuğluk and Mr Türk, the party's co-presidents, of their status as members of parliament, finding that they had brought about the dissolution through their statements and activities. It also banned 37 members of the DTP from becoming founding members, ordinary members, leaders or auditors of any other political party for five years.

In its judgment dissolving the DTP, the Constitutional Court noted that the DTP had the same political goals as a terrorist organisation, the PKK (Kurdish Workers' Party). Based essentially on speeches by the DTP's leaders and the activities of the party and its members, it concluded that the DTP had become an instrument of the PKK's terrorist strategy, and that it was linked to and in sympathy with that organisation. It also held that the fact that the DTP had not openly distanced itself from the PKK's activities could be considered as evidence of its support for terrorism.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association) of the Convention, the applicants complained that the dissolution of the DTP had infringed their right to freedom of association. Relying on Articles 1 (protection of property) and 3 (right to free elections) of Protocol No. 1 to the Convention, the applicants also complained about the forfeiture of their parliamentary seats and the financial losses incurred by the DTP's dissolution, in applications nos. 3840/10, 3870/10, 3878/10.

The applications were lodged with the European Court of Human Rights on 20 January 2010, 4 and 15 March 2010, and 8 and 14 June 2010.

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

Julia **Laffranque** (Estonia), *President*,
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Abel **Campos**, *Deputy Section Registrar*.

Decision of the Court

[Article 11 \(freedom of assembly and association\)](#)

The Court noted that the DTP had been criticised for conducting activities which undermined the territorial integrity of the State and the unity of the nation, drawing a distinction between the

Kurdish and Turkish nations and thus endorsing the cause of the PKK, which advocated terrorist acts. The Court therefore examined the compatibility of the ideas put forward by the DTP with the principles of democracy.

In this connection, the Court noted that the DTP's programme condemned violence and put forward democratic political solutions that were compatible with the rule of law and respect for human rights. It noted, in particular, that Ms Tuğluk and Ms Ayla, the former and subsequent co-presidents respectively, had advocated a peaceful solution to the Kurdish problem, stating, among other things, that violence was not a solution and that the PKK should disarm.

Moreover, in the Court's opinion, the fact that the political project pursued by the DTP had been incompatible with the current principles and structures of the Turkish State did not make it incompatible with the rules of democracy. It was of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that called into question the way a State was currently organised, provided that they did not harm democracy itself. The Court thus accepted that the principles set out by the DTP, such as a peaceful solution to the Kurdish problem and recognition of Kurdish identity were not in themselves contrary to the fundamental principles of democracy.

It also noted that even if there was a parallelism between the principles supported by the DTP and the PKK, such a finding would not suffice to conclude that the party approved the use of force in order to implement its policy. The Court held that if merely by advocating those principles a political group were held to be supporting acts of terrorism, that would reduce the possibility of dealing with related issues in the context of a democratic debate and would allow armed movements to monopolise support for the principles in question. In addition, the Court attached considerable weight to the fact that the DTP explicitly excluded the use of force in order to implement its policy, given that the statements by its co-presidents showed that their party intended to play a political role to put an end to violence. It also considered that it had not been shown that the DTP sought to undermine the democratic regime; nor had it been argued that it had any real chance of installing a regime which would meet with the approval of everyone on the political stage. In consequence, the Court did not detect any political project that was incompatible with the concept of a democratic society within the meaning of the Convention.

With regard to the contested speeches by the party's two co-presidents, the Court noted that Mr Türk was criticised for having expressed his satisfaction at the role played by Abdullah Öcalan in evacuating armed groups out of the country and in Turkey's candidacy for the European Union. In the Court's view, these were topical issues that were unrelated to violence, and indeed Mr Türk had stated that he was in favour of a peaceful and democratic solution with regard to the major problems facing Turkey.

With regard to his statements concerning Abdullah Öcalan's conditions of detention, the Court noted that he had limited himself to drawing the public's attention to this subject, without indicating any support or any approval for the PKK's actions. As to his failure to condemn the PKK's acts, the Court noted that Mr Türk had explained that such a statement would have resulted in the loss of all influence over his electorate. The Court thus considered that such stances, when viewed in context, could not be regarded as indirect support for terrorism in that the speechwriter emphasised, above all, the role that he wished to play in ending the violence.

The Court specified that these considerations were also valid for Ms Tuğluk, whose statements concerned, in particular, her electorate's political claims and robust criticism of the struggle conducted by the security forces against terrorism in south-east Turkey. The Court did not consider this to amount to support for or approval of the PKK's actions. The Court further reiterated that in the past it had found that such statements were protected by the right to freedom of expression. The Court also noted that Mr Türk and Ms Tuğluk, as elected representatives of the people and members of the parliamentary opposition, drew attention to the preoccupations of their electorate

and defended their interests. Their statements thus qualified as political speech, which was at the very heart of freedom of expression. Furthermore, they had not encouraged the use of violence, armed resistance or insurrection. In the Court's view, this was a factor which it was essential to take into consideration. In consequence, the Court was not convinced that in giving the speeches in issue Mr Türk and Ms Tuğluk had been pursuing any other goal than that of discharging their duty to draw attention to their electors' concerns.

With regard to the party's other actions, the Court noted that the activities conducted by the DTP to protest against Abdullah Öcalan's conditions of detention or to draw public attention to his state of health pertained to the right to freedom of expression and to peaceful demonstration. As to the slogans in support of Abdullah Öcalan and the PKK flags, placards and emblems displayed at meetings during which the co-presidents had spoken, the Court noted that it was not alleged or established that the leaders had been responsible for them, or had encouraged the crowd to behave in this way; moreover, it pointed out that it had already ruled on similar slogans and had considered that they had no impact on national security or public order.

With regard to the fact that the DTP had not openly distanced itself from the PKK's activities, the Court reiterated that it has already held that the refusal to condemn violence against a background of terrorism could be seen as tacit political support for terrorism. It therefore considered that taking measures against the DTP on the ground that the party had not openly distanced itself from actions or speeches by its members or local leaders that were likely to be interpreted as tacit support for terrorism could reasonably be regarded as corresponding to a pressing social need.

The Court noted, however, that the Constitutional Court had ordered the most severe of the measures provided for by the Constitution, namely the party's dissolution, rather than imposing a lighter penalty, consisting in depriving it partially or entirely of financial assistance from the State; this dissolution had also entailed the liquidation of the party and the transfer of its assets to the Treasury. As an ancillary penalty, the Constitutional Court had also stripped Ms Tuğluk and Mr Türk of their status as members of parliament, and banned 37 members of the party, including the applicants, from becoming founding members, ordinary members, leaders or auditors of any other political party for five years. For the Court, those sanctions were undoubtedly very severe.

The Court noted that the Constitutional Court had primarily based its decision on certain stances taken by the leaders of the DTP, especially the speeches made by its two co-presidents, yet without placing them in their historical and political context, and without attaching any importance to their argument that the DTP wished to play a mediatory role to bring an end to the violence in Turkey. The Court also noted that the Constitutional Court had held that, on the basis of actions or activities by the DTP's leaders, this party shared the ideology and the aims of an armed organisation. Yet the Court could not detect in the present case any political project that was incompatible with the concept of democratic society for the purposes of the Convention.

Equally, the Court considered that the two co-presidents essentially recommended "democratic" and "peaceful" solutions to the Kurdish problem. Furthermore, the Court held that even if this party had not openly distanced itself from actions or speeches by its members or local leaders that were likely to be interpreted as tacit support for terrorism, it had not been alleged that the central leaders had refrained from condemning a particular violent act carried out by the PKK at a given moment; nor was it alleged that the DTP's positions were likely to give rise to social conflict between its supporters and the other political formations. Although Mr Türk and Ms Tuğluk refused to describe the PKK as terrorist, their stance, placed in its context, did not necessarily indicate support for violence. In this connection, the Court took note of the argument put forward by the party's leaders, emphasising the mediatory role that their party had wished to play with a view to securing a peaceful solution to the Kurdish problem.

In those circumstances, the Court considered that, in so far as the contested measure was based on the DTP's political line, the reasons put forward by Constitutional Court to order this party's

dissolution could not be considered sufficient to justify the interference. The Court considered that the sole fact that this party had not openly distanced itself from the acts or speeches of its members or its local leaders that were likely to be interpreted as tacit support for terrorism had had a relatively limited potential impact on public order or the protection of the rights of others. This failing could not in itself constitute a reason that justified such a severe penalty as the dissolution of an entire party.

The Court held that the DTP's dissolution could not be described as proportionate to the aim pursued, and that the reasons given by the respondent State, while relevant, could not be considered as sufficient to justify the interference. In spite of the discretion ("margin of appreciation") allowed to the Contracting States in this area, the Court considered that there was no reasonable relationship of proportionality between the DTP's dissolution and the legitimate aims pursued; it therefore concluded that there had been a violation of Article 11 of the Convention in respect of all the applicants.

Article 3 of Protocol No. 1 (right to free elections)

The Court noted that Mr Türk and Ms Tuğluk had been forced to vacate their parliamentary seats on account of acts or statements by them which had led to the party's dissolution. The Court had found that their speeches were not such as to justify this dissolution, since the applicants enjoyed freedom of expression in so far as their statements could not be interpreted as any form of direct or indirect support for the acts committed by Abdullah Öcalan or by the PKK, or any form of approval for them. The Court was thus struck by the extreme harshness of the measure in question: the DTP had been immediately and permanently dissolved, and the applicants who had been members of parliament had been prohibited from engaging in their political activities and could no longer fulfil their mandate.

The Court therefore considered that the imposed penalty could not be regarded as proportionate to any legitimate aim, since the measure in question was incompatible with the very substance of the applicants' right to be elected and sit in parliament under Article 3 of Protocol No. 1 and infringed the sovereign power of the electorate who elected them as members of parliament. For that reason, the Court held that there had been a violation of Article 3 of Protocol No. 1 to the Convention.

Other articles

The Court held that there was no need to examine separately the complaint concerning pecuniary damage.

Article 41 (just satisfaction)

The Court held that Turkey was to pay both of the applicants Mr Türk and Ms Tuğluk 30,000 euros (EUR) for all heads of damage taken together, as well as EUR 7,500 to Mr Ay in respect of non-pecuniary damage; it was also to pay EUR 3,000 to Mr Türk and Ms Tuğluk jointly in respect of costs and expenses and EUR 1,000 to Mr Ay in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.