



Turkish opposition party complaint about April 2017 referendum on President's powers declared inadmissible

The case of [Cumhuriyet Halk Partisi v. Turkey](#) (application no. 48818/17) concerned a complaint by a Turkish opposition party about the referendum held on 16 April 2017, on the modification and repeal of constitutional provisions dealing with presidential powers.

In its decision in the case the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The party's main argument was that the referendum should be considered to fall within the scope of Article 3 of Protocol No. 1 (right to free elections) as a result of the far-reaching nature of the changes it introduced into the Turkish parliamentary system and their inextricable link to the concept of effective political democracy in Turkey. It also alleged that the Government had failed to ensure the free expression of the people's opinion in the choice of legislature, the separation of powers, the independence of the judiciary and the rule of law.

The Court first noted that the provision of the European Convention in question referred to "free elections at reasonable intervals" and "the choice of the legislature". As such, it was clear that the ordinary meaning of the word "elections" meant that the Article did not refer to referendums, which were limited to a particular time and a particular subject.

It also examined the party's argument that the fundamental nature of the changes involved meant that a referendum of the kind held in Turkey should be considered as part of the right to free elections. However, the Court emphasised that the text of the Convention provision did not allow for an expansive interpretation of the applicability of the provision.

Principal facts

A referendum was held in Turkey on 16 April 2017, which significantly expanded the powers of the office of the President, including the power to dissolve parliament, to appoint and dismiss vice-presidents and ministers and other high-level State officials, including judges of the Constitutional Court.

On the day of the referendum, while some of the votes were being counted, the National Electoral Commission received information that stamps had been used in some polling stations that had the word "yes" on them rather than "choice". The Commission decided on the same day that such stamps were valid. The Commission was also later told that some ballot papers and envelopes had lacked the necessary seals. It subsequently declared such envelopes and papers valid throughout the country.

The result of the referendum showed that just over 51% of people who voted backed all constitutional changes while just over 48% voted against. Turnout was approximately 85%.

The applicant party complained about the referendum to the Commission, asking to have it declared invalid. It argued that the Commission had breached the law by allowing the ballots without seals. It noted that the requirement to have ballots sealed was to avoid fraudulent voting and pointed out that some envelopes and ballot sheets might have been deposited after being stolen. The Commission should have established how many unsealed ballot papers there had been and then have checked their validity. Allowing the ballots meant it had been impossible to remedy such

irregularities. It complained that unlawful and unfair conduct during the referendum process had impaired the legitimacy of the vote and asked the Commission to annul the result.

The Commission rejected the party's complaint. Its decision was final as no appeal was possible under the Constitution.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 4 July 2017.

Relying in particular on Article 3 of Protocol No. 1 (right to free elections), the party complained that the referendum had failed to ensure the free expression of the people's opinion in the choice of legislature, the separation of powers, the independence of the judiciary and the rule of law. It also argued that the authorities had ignored the allegation that counting the ballots that had been without seals had been capable of influencing the outcome of the referendum. It submitted that the referendum should be considered as falling within the scope of Article 3 of Protocol No.1 as a result of the far-reaching nature of the changes it introduced into the Turkish parliamentary system.

The party also complained under Article 13 (right to an effective remedy) that there was no appeal against the Commission's decision on the referendum and under Article 11 (freedom of assembly and association) that it had been a victim of unfavourable and undemocratic conditions during the referendum campaign.

The decision was given by a Chamber of seven, composed as follows:

Robert Spano (Iceland), *President*,
Julia Laffranque (Estonia),
Ledi Bianku (Albania),
Işıl Karakaş (Turkey),
Paul Lemmens (Belgium),
Valeriu Griţco (the Republic of Moldova),
Jon Fridrik Kjølbro (Denmark), *Judges*,

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

The Court, after joining the complaint under Article 11 to that under Article 3 of Protocol No. 1, found by a majority that the complaint was incompatible *ratione materiae* with the provisions of the Convention and was therefore to be rejected as inadmissible.

The Court referred to the wording of the provision relied on by the party in its complaint and noted that it talked of an obligation to hold "elections at reasonable intervals" which ensured the free expression of the opinion of the people in the "choice of the legislature".

It found that it cannot be inferred from the ordinary meaning of the term "elections" in Article 3 of Protocol No.1 that a "referendum" would fall within the scope of that provision. Firstly, referendums, unlike elections, are not held "at reasonable intervals" owing to the fact that in most, if not all, cases they represent a system of ascertaining the opinion of the people on a matter that is not a recurrent subject, such as the Constitutional Referendum in the present case, which is limited to a particular time and a particular subject. Secondly, and importantly, referendums are not usually organised as a means of electing citizens to certain posts, in other words as an election giving the electorate the possibility to choose the legislature. In the present case, although the Constitutional Referendum introduced many significant changes to the Constitution, the people of Turkey were clearly not choosing any particular person or persons for a legislative post or posts.

The Court examined the argument made by the applicant party that the changes brought about by the referendum were so fundamental that they should fall within the scope of Article 3 of Protocol No. 1. The Court considered that the party was asking it to take a “purposive” approach because of the nature of those changes and the fact that they were inextricably linked to the concept of effective political democracy in Turkey.

The Court noted the importance of the rights guaranteed by the provision in question, but again emphasised that the text of Article 3 of Protocol No.1 clearly suggested that its ambit was limited to elections and showed the limits of an expansive, purposive interpretation of its applicability. Based on its considerations in the case and its earlier case-law, it found that the applicability of the Article 3 of Protocol No.1 could not be expanded to include referendums.

Other Articles

The Court noted that Article 13 only applied where there was an “arguable complaint”, which was not the case as the complaint under Article 3 of Protocol No. 1 was inadmissible.

The decision is available only in English.

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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.