



Dissolution of Turkish political party HADEP was not justified

In today's Chamber judgment in the case [HADEP and Demir v. Turkey](#) (application no. 28003/03), which is not final¹, 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

The case concerned the dissolution of the People's Democracy Party, "HADEP", by a decision of the Turkish Constitutional Court in 2003.

Principal facts

The applicants are Halkın Demokrasi Partisi (People's Democracy Party, "HADEP"), a political party established in May 1994, and Turan Demir, its general secretary, elected to that post in February 2003. A smaller opposition party, which according to its programme advocated "a democratic solution to the Kurdish problem", HADEP had been subjected to raids of its premises from 1996/97, and some of its members had been attacked or killed. According to the applicants' submissions, the attacks had followed a National Security Council decision of December 1996 to dissolve the party, a secret document which had been leaked to the press. Criminal proceedings were brought against a number of HADEP members, and some of them were convicted of offences under the Prevention of Terrorism Act and the criminal code, in particular of spreading "separatist propaganda" and of lending assistance to the illegal Workers Party of Kurdistan (PKK). Other proceedings against party members were suspended.

In January 1999, the chief prosecutor brought proceedings before the Constitutional Court and demanded that HADEP be dissolved, arguing that it had become a "centre of illegal activities against the integrity of Turkey". He referred to the criminal proceedings pending against some of the members and to the fact that during the party's general meeting in 1996 the Turkish flag had been taken down and replaced with a PKK flag. In further submissions, the prosecutor maintained that the party had close ties with the PKK. In the proceedings, lawyers for HADEP drew attention to the fact that the person who had taken down the flag at the party meeting was not a member. They stated that immediately after the incident the party congress had publicly condemned it. In its decision of March 2003, which became final in July 2003, the Constitutional Court decided to dissolve HADEP, concluding that it had become a centre of illegal activities which included aiding and abetting the PKK. The Court further banned a number of party members from becoming founders or members of any other political party for five years.

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

Complaints, procedure and composition of the Court

The applicants complained that the dissolution of the HADEP party was in breach of Article 11. They further relied, in particular, on Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 14 (prohibition of discrimination), Article 1 of Protocol No. 1 (protection of property) and Article 3 of Protocol No. 1 (right to free elections).

The application was lodged with the European Court of Human Rights on 1 September 2003.

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

Françoise **Tulkens** (Belgium), *President*,
Ireneu **Cabral Barreto** (Portugal),
Dragoljub **Popović** (Serbia),
Nona **Tsotsoria** (Georgia),
Işıl **Karakaş** (Turkey),
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 11

The parties agreed that HADEP's dissolution amounted to an interference with its right to freedom of association. The Court had hesitations as to whether the interference could be said to have pursued the legitimate aims of preventing disorder, protecting the rights of others and protecting territorial integrity and thus preserving national security, as argued by the Turkish Government. It decided to examine this question together with the closely related question whether the interference had been necessary in a democratic society for the purpose of Article 11.

It observed that the party had been dissolved on the basis of activities and statements of some of its members which, according to the Turkish Constitutional Court, made it a centre of illegal activities. As regards the question whether the conclusion that HADEP was guilty of aiding and abetting the PKK had been based on an acceptable assessment of the relevant facts, the Court noted that the Turkish court's decision had referred to statements made by party members, in which the actions of the Turkish security forces in south-east Turkey in their fight against terrorism were referred to as a "dirty war". In previous judgments, the Court had already had occasion to examine articles and speeches featuring the phrase "dirty war".² It had held that while being a sharp criticism of the Government's policy, they did not incite to hatred, revenge, recrimination or armed resistance. The same was true of the statements made by HADEP members, which did not encourage violence, armed resistance or insurrection and could thus not in themselves constitute sufficient evidence to equate the party with armed groups carrying out acts of violence.

The Turkish court had further referred to the fact that visitors of HADEP premises had been allowed to watch MED TV, a private television channel considered to be the media organ of the PKK. The Court had equally examined this issue in previous judgments³ and

² For example *Birdal v. Turkey* (53047/99) of 2 October 2007 and *Ulusoy v. Turkey* (52709/99) of 31 July 2007

³ For example *Albayrak v. Turkey* (38406/97) of 31 January 2008

had found that freedom of expression required that a distinction was made between the personal views of a person and information that others wished or might be willing to impart to him or her. No such distinction appeared to have been made by the Turkish court in its decision on HADEP.

Although the person who had taken down the Turkish flag at the general meeting of HADEP was not a party member, the Turkish court had relied heavily on the incident, even though the Turkish Constitution provided for a party to be deemed a centre of illegal activities if they were carried out by its members. It had further relied on allegations that some party members had been involved in illegal activities, even though a number of the criminal proceedings against them had been suspended.

The Court considered that statements by HADEP members which considered the Kurdish nation as distinct from the Turkish nation had to be read together with the party's aims as set out in its programme, namely that it had been established to solve the country's problems in a democratic manner. Even if HADEP advocated the right to self-determination of the Kurds, that would not in itself be contrary to democratic principles and could not be equated to supporting acts of terrorism. Taking such a stance would imperil the possibility of dealing with related issues in the context of a democratic debate.

In view of these considerations, the Court concluded that the interference with the applicants' freedom of association had not been necessary in a democratic society, in violation of Article 11.

Other articles

The Court held that in view of the findings under Article 11, there was no need to examine the complaints under Articles 9, 10 and 14 or the complaints under Articles 1 and 3 of Protocol No. 1.

Article 41

Under Article 41 (just satisfaction), the Court held that Turkey was to pay Mr Demir 24,000 euros (EUR) in respect of non-pecuniary damage, to be held by him for members and leaders of HADEP, and EUR 2,200 to the applicants jointly, in respect of costs and expenses.

The judgment 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.