



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

Information Note on the Court's case-law 192

January 2016

***Party for a Democratic Society (DTP) and Others v. Turkey -
3840/10, 3870/10, 3878/10 et al.***

Judgment 12.1.2016 [Section II]

Article 11

Article 11-1

Freedom of association

Dissolution on grounds that it supported terrorism of a political party advocating a peaceful solution to the Kurdish problem: *violation*

Article 3 of Protocol No. 1

Stand for election

Removal of members of parliament from office on account of words or deeds that led to dissolution of their political party: *violation*

Facts – The applicants were the Party for a Democratic Society (“the DTP”), the party’s co-presidents and individuals exercising various functions in the party.

Founded in 2005, the DTP belonged to the movement of Turkish left-wing pro-Kurdish political parties.

In December 2009 it was dissolved by a unanimous decision of the Constitutional Court, which entailed liquidation of the party and the transfer of its assets to the Treasury. In addition, the parliamentary mandates of the party’s two co-presidents were terminated, on the ground that they had brought about the dissolution through their statements and activities. Lastly, 37 members of the DTP were banned from becoming founding members, ordinary members, leaders or treasurers of any other political party for five years.

The Constitutional Court considered 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.

Law

Article 11: The DTP’s dissolution and the ancillary measures amounted to an interference in the applicants’ exercise of their right to freedom of association. The interference had

been prescribed by law and the impugned measures pursued, in particular, the legitimate aim of preventing disorder and protecting the rights and freedoms of others.

In deciding to order the dissolution, the Constitutional Court had first noted that the DTP had the same political aims as the PKK terrorist organisation, that it distinguished between the Kurdish people and the Turkish people, and that it took the view that the Republic of Turkey oppressed the Kurdish people.

(a) *Compatibility of the ideas put forward by the DTP with the principles of democracy* – Prior to its dissolution, the DTP was the main legally created political organisation in Turkey which advocated a peaceful solution to the Kurdish problem. The political organisations which preceded it had been dissolved by the Constitutional Court on account of activities contrary to the Constitution. In so far as they had been examined by the European Court, those dissolutions had resulted in findings of a violation of Article 11 of the Convention.

Neither in its constitution nor in its programme had the DTP proposed altering Turkey's constitutional settlement in a way that would be contrary to the fundamental principles of democracy. Its programme condemned violence and put forward political solutions that were democratic and compatible with the rule of law and respect for human rights. The fact that the political programme defended by the DTP was considered 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. It followed that the principles set out by the DTP's bodies, 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.

Furthermore, if a parallel were to be established between the principles defended by the DTP and those of the PKK, this would not suffice to conclude that the party approved of the use of force in order to implement its policy. If it were to be considered that merely by advocating those principles a legally established 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.

Thus, the Court did not detect any political project that was incompatible with the concept of a democratic society within the meaning of the Convention.

(b) *Examination of the DTP's activities*

(i) *Speeches by the DTP's co-presidents* – In the Court's opinion, there was no link to violence in the speeches, and a peaceful and democratic solution was foreseen for important problems facing Turkey. The speeches drew the public's attention to certain subjects, without indicating any support for the PKK's actions or any approval of them.

As parliamentarians, the two co-presidents of the DTP represented their electorate. Their statements, which qualified as political speech, had not encouraged the use of violence, armed resistance or insurrection. In consequence, they had pursued the aim of discharging their duty to draw attention to their electors' concerns.

(ii) *The DTP's other stances* – With regard to the actions to protest against Abdullah Öcalan's conditions of detention or to draw domestic and international public attention to his state of health, these pertained to the protection afforded 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 at which the co-presidents had spoken, 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 the Court reiterated that it had already ruled on similar slogans and had considered that they had no impact on national security or public order.

Furthermore, given that the statements made by the DTP's two co-presidents had been examined, it was not necessary to analyse all of the speeches or activities for which the DTP members or local leaders were criticised.

The Court was aware of the authorities' concern about words or deeds which had the potential to exacerbate the security situation in south-east Turkey, where since approximately 1985 serious disturbances had raged between the security forces and the members of the PKK, involving very heavy loss of life.

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". It was therefore appropriate to examine whether there was a reasonable relationship of proportionality between the dissolution of the DTP and the legitimate aims pursued.

(c) *Proportionality of the impugned measure* – The Constitutional Court had imposed the most severe of the measures laid down by the Constitution, by ordering the party's dissolution, its liquidation and the transfer of its assets to the Treasury, rather than a less drastic measure depriving it partially or entirely of financial assistance from the State. Equally, the DTP's co-presidents had been removed from their parliamentary seats, and 37 members of the party, including the applicants, had been banned from becoming founding members, ordinary members, leaders or treasurers of another political party for five years.

The Constitutional Court had essentially based its dissolution of the party on certain stances taken by the DTP's leaders, but without placing them in their historical and political context, and without attaching any importance to the party's wish to play a mediatory role in the process aimed at ending the violence in Turkey.

Thus, the Constitutional Court had held, on the basis of actions or activities by the DTP's leaders, that this party shared the ideology and the aims of an armed organisation. Yet the Court could not discern any political project that was incompatible with the concept of democratic society within the meaning of the Convention. Equally, the two co-presidents had essentially recommended "democratic" and "peaceful" solutions to the Kurdish problem in their speeches.

In addition, the party's two co-presidents had openly excluded any recourse to violence to achieve their objectives. Furthermore, although 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, it had not been alleged that the party's central leaders had refrained from condemning a specific act of violence 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 the two co-presidents had refused to describe the PKK as a terrorist organisation, this did not, when placed in context, necessarily indicate support for violence. They had emphasised the mediatory role that their party wished to play in securing a peaceful solution to the Kurdish problem.

In those circumstances, in so far as the contested measure was based on the DTP's political line, the reasons put forward by the Constitutional Court to order the dissolution of the party (one of the main political protagonists to have argued in favour of a peaceful solution to the Kurdish problem) could not be considered sufficient to justify the interference. In addition, the mere fact that this party had not openly distanced itself from acts or speeches by 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". In the circumstances, this failing could not in itself constitute a reason justifying such a severe penalty as the dissolution of an entire party. The dissolution of the DTP could thus not be considered proportionate to the legitimate aims pursued.

It followed that the reasons put forward by the respondent State, while relevant, could not be considered sufficient to justify the interference in question. In spite of the margin of appreciation enjoyed by the Contracting States in this area, there was no reasonable relationship of proportionality between the DTP's dissolution and the legitimate aims pursued.

Conclusion: violation (unanimously).

Article 3 of Protocol No. 1: Even supposing that the measure in question pursued one or more legitimate aims, namely the protection of public order and the rights and freedoms of others, the Court considered that it had not been proportionate. Under Article 84 § 5 of the Constitution, only the seat of a member of parliament whose words and deeds had led to the dissolution of his or her party was to be forfeited. Yet the forfeiture of the applicants' parliamentary seats had been the consequence of the dissolution of the political party of which they were members and occurred regardless of their personal political activities.

The applicants' speeches had not been such as to justify the dissolution measure. Their right to freedom of expression was protected in so far as their statements could not be interpreted as expressing 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. In their capacity as elected representatives of the people, the two applicants represented their electorates, drew attention to the latter's preoccupations and defended their interests.

The Court was struck by the extreme harshness of the measure in question: the DTP had been immediately and permanently dissolved, and the applicants, who were members of parliament, had been prohibited from engaging in their political activities and the functions related to their mandates.

In view of all the above considerations, the penalty imposed on the applicants by the Constitutional Court could not be regarded as proportionate to any legitimate aim. It followed that the measure in question was incompatible with the very substance of the applicants' right under Article 3 of Protocol No. 1 to be elected and to sit in parliament, and infringed the sovereign power of the electorate who had elected them as members of parliament.

Conclusion: violation (unanimously).

Article 41: EUR 30,000 to each of the party's co-presidents in respect of pecuniary and non-pecuniary damage; EUR 7,500 to one of the other applicants in respect of non-pecuniary damage and claim in respect of pecuniary damage dismissed.

(See also: *The Christian Democratic People's Party v. Moldova*, 28793/02, 14 February 2006, [Information Note 83](#); *Republican Party of Russia v. Russia*, 12976/07, 12 April

2011, [Information Note 140](#); *Refah Partisi (the Welfare Party) and Others v. Turkey*, 41340/98 et al., 13 February 2003, [Information Note 50](#))

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