



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

CASE OF SOCIALIST PARTY AND OTHERS v. TURKEY

(20/1997/804/1007)

JUDGMENT

STRASBOURG

25 May 1998

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SUMMARY¹

Judgment delivered by a Grand Chamber

Turkey – dissolution of a political party by the Constitutional Court

I. ARTICLE 11 OF THE CONVENTION

A. Applicability of Article 11

Political parties were a form of association essential to proper functioning of democracy – in view of importance of democracy in Convention system, there could be no doubt that political parties came within scope of Article 11.

An association was not excluded from protection afforded by Convention simply because its activities were regarded by national authorities as undermining constitutional structures of State and calling for imposition of restrictions.

B. Compliance with Article 11*1. Whether there was an interference*

Yes, as regards all three applicants.

*2. Whether the interference was justified***(a) “Prescribed by law”**

Common ground.

(b) Legitimate aim

Protection of “national security”.

(c) “Necessary in a democratic society”

Article 11 had also to be considered in light of Article 10 – political parties had essential role in ensuring pluralism and proper functioning of democracy.

Statements of Chairman of SP on which Constitutional Court based its decision to dissolve party: contained invitation to people of Kurdish origin to rally together and assert certain political claims, but no call to use violence, rebel or otherwise reject democratic principles.

Statements in issue also presented political programme aimed at establishing federal system in Turkey – fact that such a programme was considered incompatible with current principles and structures of Turkish State did not make it incompatible with rules of democracy – it was of essence of democracy to allow diverse political programmes to be proposed and debated, even those that called into question way a State was currently organised, provided that they did not harm democracy itself.

1. This summary by the registry does not bind the Court.

Chairman of SP had been acquitted in National Security Courts, where he had been prosecuted in respect of same statements.

Interference in question had been radical: SP had been dissolved with immediate and permanent effect, its assets liquidated and transferred *ipso jure* to the Treasury and its leaders banned from carrying on certain similar political activities – measures as severe as those could only be applied in most serious cases.

It had not been established how, in spite of fact that in making them their author had declared attachment to democracy and expressed rejection of violence, statements in issue could be considered to have been in any way responsible for problems terrorism posed in Turkey – no need either to bring Article 17 into play.

Conclusion: violation (unanimously).

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

Complaints related to same facts as those considered under Article 11.

Conclusion: unnecessary to decide that issue (unanimously).

III. ARTICLES 1 AND 3 OF PROTOCOL No. 1

Measures complained of were incidental effects of SP's dissolution.

Conclusion: unnecessary to decide that issue (unanimously).

IV. ARTICLE 6 § 1 OF THE CONVENTION

In view of conclusion concerning compliance with Article 11, unnecessary to examine that complaint.

Conclusion: unnecessary to decide that issue (unanimously).

V. ARTICLE 50 OF THE CONVENTION

A. Annulment of order for dissolution

Court had no jurisdiction to order such a measure.

B. Damage, costs and expenses

Pecuniary damage and costs and expenses: no evidence in support – claim dismissed.

Non-pecuniary damage: assessed on equitable basis.

Conclusion: respondent State to pay applicants specified sum for non-pecuniary damage (unanimously).

COURT'S CASE-LAW REFERRED TO

16.12.1992, Hadjianastassiou v. Greece; 20.9.1993, Saïdi v. France; 26.9.1995, Vogt v. Germany; 3.7.1997, Pressos Compania Naviera S.A. and Others v. Belgium (*Article 50*); 25.11.1997, Zana v. Turkey; 30.1.1998, United Communist Party of Turkey and Others v. Turkey

In the case of Socialist Party and Others v. Turkey¹,

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A², as a Grand Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr C. RUSSO,
Mr N. VALTICOS,
Mrs E. PALM,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,
Sir John FREELAND,
Mr A.B. BAKA,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,
Mr J. MAKARCZYK,
Mr P. KÜRIS,
Mr U. LÖHMUS,
Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 26 February and 25 April 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 27 January 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). It originated in an application (no. 21237/93) against the

Notes by the Registrar

1. The case is numbered 20/1997/804/1007. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

Republic of Turkey lodged with the Commission under Article 25 by a political party, the Socialist Party, and two Turkish nationals, Mr Doğu Perinçek and Mr İlhan Kırıt, on 31 December 1992.

The Commission's request referred to Articles 44 and 48 (a) of the Convention and to Rule 32 of Rules of Court A. The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 and Articles 9, 10, 11, 14 and 18 of the Convention, and Articles 1 and 3 of Protocol No. 1.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d), the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. On 30 January 1997 the President of the Court decided in the interests of the proper administration of justice that the present case should be heard by the Chamber constituted on 29 October 1996 to consider the case of United Communist Party of Turkey and Others v. Turkey¹ (Rule 21 § 7). That Chamber included *ex officio* Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). The other seven members, whose names had been drawn by lot in the presence of the Registrar, were Mr B. Walsh, Mr C. Russo, Mr I. Foighel, Mr A.N. Loizou, Mr J. Makarczyk, Mr P. Kūris and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. On 28 August 1997 the Chamber decided to relinquish jurisdiction forthwith in favour of a Grand Chamber (Rule 51). The Grand Chamber to be constituted included *ex officio* Mr Ryssdal, the President of the Court, and Mr R. Bernhardt, the Vice-President, together with the members and the four substitutes of the original Chamber, the latter being Mr A.B. Baka, Mr M.A. Lopes Rocha, Mr R. Pekkanen and Mr R. Macdonald (Rule 51 § 2 (a) and (b)). On the same day the President, in the presence of the Registrar, drew by lot the names of the seven additional judges needed to complete the Grand Chamber, namely Mr F. Matscher, Mr N. Valticos, Mrs E. Palm, Mr J.M. Morenilla, Sir John Freeland, Mr L. Wildhaber and Mr U. Löhmus (Rule 51 § 2 (c)). Subsequently Mr Ryssdal, Mr Walsh and Mr Macdonald were unable to take part in the further consideration of the case (Rules 24 § 1 and 51 § 3). Mr Ryssdal's place as President of the Grand Chamber was taken by Mr Bernhardt (Rules 21 § 6 and 51 § 6).

1. Case no. 133/1996/752/951.

5. As President of the Chamber Mr Ryssdal, acting through the Registrar, had consulted the Agent of the Turkish Government (“the Government”), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants' and the Government's memorials on 1 and 3 October 1997 respectively.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 February 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mrs D. AKÇAY,	
Mr M. ÖZMEN,	<i>Co-Agents,</i>
Mr A. KAYA,	
Mrs M. GÜLŞEN,	
Ms A. EMÜLER,	
Ms A. GÜNYAKTI,	<i>Advisers;</i>

(b) *for the Commission*

Mr G. RESS,	<i>Delegate;</i>
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(c) *for the applicants*

Mr D. PERİNÇEK,	<i>Applicant,</i>
Mr A. KALAN and	
Mr M. CENGİZ, both of the Ankara Bar,	<i>Counsel.</i>

The Court heard addresses by Mr Ress, Mr Perinçek, Mr Cengiz, Mr Kalan and Mrs Akçay.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The Socialist Party (“the SP”), the first applicant, was a political party that was dissolved by the Constitutional Court (see paragraph 15 below).

Mr İlhan Kırıt and Mr Doğu Perinçek, the second and third applicants, were respectively Chairman and former Chairman of the SP. They live in Istanbul.

8. The SP was formed on 1 February 1988. On the same day, its constitution and programme were submitted to the office of Principal State Counsel at the Court of Cassation for assessment of their compatibility with the Constitution and Law no. 2820 on the regulation of political parties (“Law no. 2820” – see paragraphs 16 and 17 below).

A. First application to have the Socialist Party dissolved and the prosecution of its leaders

9. On 15 February 1988, when the SP was preparing to take part in a general election, Principal State Counsel at the Court of Cassation (“Principal State Counsel”) applied to the Constitutional Court for an order dissolving the SP. Relying in particular on passages from its programme, he accused the party of having sought to establish the domination of the working class with a view to establishing a dictatorship of the proletariat (Articles 6, 10 and 14 and former Article 68 of the Constitution and sections 78 and 101(a) of Law no. 2820).

10. In a judgment of 8 December 1988, published in the Official Gazette of 16 May 1989, the Constitutional Court dismissed the application as unfounded, as it considered that the political objectives stated in the SP’s programme did not infringe the Constitution.

11. Criminal proceedings were then brought in the National Security Courts against some of the leaders of the SP, including Mr Perinçek. They were accused of spreading harmful propaganda in favour of the domination of one social class over the others, contrary to Article 142 of the Turkish Criminal Code, as then worded (see paragraph 18 below). The allegation against Mr Perinçek was based in particular on speeches he had made at two public meetings on 10 February 1990 at Diyarbakır and 21 March 1990 at Van and on an article that had appeared in a political journal on 4 March 1990, that is to say before his election as Chairman of the SP on 6 July 1991. Following the repeal of Article 142 of the Criminal Code by Law no. 3713 of 12 April 1991 (the Prevention of Terrorism Act), the accused were all acquitted. The SP later published the speeches in question under the titles: “*Serhildan çağruları-1, Kawa ateşi yaktı*” and “*Serhildan çağruları-2, Karpuz değil cesaret ekin*” (see paragraph 13 below).

12. On 26 August 1991 the High Electoral Committee – which had responsibility under the Constitution for ensuring the fairness of elections – decided that the SP satisfied all the conditions necessary to take part in the general election of 20 October 1991. The party consequently ran an election campaign.

B. Second application to have the Socialist Party dissolved

13. On 14 November 1991 Principal State Counsel applied to the Constitutional Court for a second time for an order dissolving the SP. He accused the party of having carried on activities likely to undermine the territorial integrity of the State and the unity of the nation contrary to Articles 3, 4, 14 and 66 and former Article 68 of the Constitution, and sections 78, 81 and 101(b) of Law no. 2820.

In support of his application, Principal State Counsel relied in particular on the following extracts from the SP's election publications and from oral statements made by its Chairman, Mr Perinçek, at public meetings and on television.

1. Extracts from Socialist Party publications

(a) **“Serhildan çağruları-1, Kawa ateşi yaktı” (“Calls to stand up – no. 1, Kawa¹ has lit the fire”)**

“... Dear friends, ... the second dynamic is the Kurdish dynamic. It is the call for equality and freedom, [it is] the Kurds' claim to rights as a nation. It is a request that the rights which the Turks enjoy ... be granted to the Kurds also.

At the beginning of the century, a war of independence was waged ... in circumstances in which imperialists occupied the country and Turks and Kurds depended on one another and had to unite and fight, side by side. The Amasya Protocol provided: 'The homeland is composed of the lands where the Turks and the Kurds live.' At the Erzurum and Sivas Congresses, oral and written declarations were made recognising the ethnic social and geographical rights of Kurds ... once the war was over and the men had hung up their weapons, an official ideology developed ... as though there was no longer any need for people from Urfa, Diyarbakır or Malatya to fight... Under that official ideology, there was no longer any room for Kurds. There were no more Kurds. Henceforth, only Turks existed...” (pages 7–8)

(b) **“Serhildan çağruları-2, Karpuz değil cesaret ekin” (“Calls to stand up – no. 2, sow courage, not watermelons”)**

“... they can make this country ... a homeland of cultures, brotherhood, workers, [a homeland] where there is voluntary unity, where nations freely decide on their future and freely unite if they so wish... Long live brotherhood between Turks and Kurds! Long live the Turkish and Kurdish peoples!” (page 31)

(c) **“Çözüm-4, Kürt sorunu” (“Solution no. 4, the Kurdish problem”)**

“... The collapse started where the regime was most tyrannical and most vulnerable. The [political] parties of the status quo failed to the east of the Euphrates... [They] are no longer to be seen in the lands where the Kurdish people live... (page 3)

1. A mythological hero.

Why have the parties of the status quo disappeared from the Kurdish provinces? Because they are nationalists... Turkish nationalism has become bankrupt in the lands where the Kurdish problem will be resolved. Turkish nationalism has drawn its borders. It has divided Anatolia into two parts, situated to the east and west of the Euphrates. Turkish nationalism and its regime are in the process of drowning in the Euphrates. That is what is known as a bankrupt regime. (page 4)

... After the mountains, the State also lost the villages and towns. That is why it counts directly on deterring the masses. State terror seeks to establish a new regime in Turkey, starting from the east... (page 10)

The State pays village guards and special forces ... which it feeds to kill Kurds through the taxes it collects from the people. The cost of the bullets fired at Kurds, of petrol used in cross-border operations ..., in short, the cost of [this] special war is borne by the people... To bring inflation and ... poverty to an end, a peaceful solution must be found to the Kurdish problem. The Kurdish problem is at the same time a Turkish problem... Living freely, in brotherhood, heart to heart, in peace and harmony with the Kurdish people is a need ... for the Turkish people... Turks and Kurds are but one people. No Turk will be entitled to enter paradise if a single Kurd [still] remains in hell. The Socialist Party is determined to fight until the last Kurd is saved from hell. (pages 11–13)

The Socialist Party is present on both sides of the Euphrates. It is the party of brotherhood between Kurds and Turks. The Socialist Party's determination in the face of the Kurdish problem has been demonstrated by its fight to combat State pressure on the Kurdish nation ..., its shared destiny in the poor Kurdish peasants' fight for survival ..., the fact that it has overcome the barrier of fear by holding meetings with thousands of people in the Kurdish villages and towns and has explained the Kurdish problem to working people throughout Turkey... Our party imparts this awareness. It sees a solution in the common destiny of peoples and their combat. To remedy the Kurdish problem, the Socialist Party has courage, ... a cause and a programme. (pages 15–16)

The Kurdish nation has a full and unconditional right to self-determination. It may, if it wishes, create a separate State. The interest of the proletariat lies in the establishment, through democratic popular revolution, of a voluntary union founded on absolute equality of rights and freedoms. The right to secede is, at all times, an essential condition of that voluntary union.

Whether or not people live together depends on the free will of nations. So that that will can be expressed, a referendum must be organised in the Kurdish provinces. During the referendum, those who are in favour of secession must also be allowed freely to express their views.

Under current historical conditions, a solution favourable to the workers of both nations lies in a democratic federal republic, to which the two federated States adhere on an equal footing. In the federation, power will be exercised through popular assemblies elected democratically by districts, towns, federated States and the federal State, beginning with the neighbourhoods and villages.

The prefectures and sub-prefectures, State governments and the federal government will be the executive bodies of those assemblies and accountable to them.

The popular federal assembly will be composed of two assemblies: the assembly of the members of parliament and the assembly of the nations.

The assembly of the members of parliament will be elected in a general election with one member of parliament elected by a given number of citizens.

The assembly of nations will be constituted by an equal number of members elected from each of the two federated States.

Legislation will be enacted on a majority vote in the two assemblies.

Legislation which is rejected by one of the assemblies will not come into force.

The Employment Code, and the Criminal, Civil and Procedural Codes will apply throughout the country and be adopted by the federal bodies.

In those districts and provinces of each State where minority groups are in the majority, regional self-determination will be permitted if the people so desire.

The federal Constitution will be the common Constitution of the two nations. It will come into force as soon it has been accepted, by referendum, by a majority in each of the two nations. Each State will also have its own Constitution. The federal Constitution will cover an increasing number of matters, to the extent that the federated republics consent thereto.

The flag and national anthem of the federal republic will be the same for Turks and Kurds. Each federated State will have its own flag and anthem. The federation shall not have a name that refers to only one of the nations.

Defence of the country, issues of war and peace, and entry into representative treaties in international relations will be the responsibility of the federal bodies.

Each federated State will [however] be entitled to establish direct commercial and cultural relations with foreign countries and to open consulates.

At each level of government, power will lie solely with the popular assemblies and the local authorities accountable to them. The prefecture, sub-prefectures, security forces and gendarmerie established under the current [central] government outside the scope of the proposed administrative system will be abolished. This democratic administrative system will also guarantee national equality and freedom.

Local security forces will receive their orders from local government authorities and be accountable to local assemblies. In the villages, security forces will be composed of local young people, who will receive instructions from village committees.

Seignior, dependence on the head of a clan or any form of medieval relation that is incompatible with brotherhood or social development shall be abolished by an agrarian reform to be undertaken by the mobilisation of farmers under the direction of the village committees.

In order that regional inequalities that have been aggravated by the market economy may be removed, the federal republic will increase its share of investment in regions that are economically underdeveloped. It will therefore guarantee and develop the economic basis of the union.

With respect to the economy, a federal system of uniform statistics will be used.

The freedom and right of each nation and each national or religious minority to develop its language and culture and to pursue political and associative activities will be guaranteed.

The official languages will be Turkish and Kurdish. Each federated republic will have its own language as its official language. Decisions of the federal bodies will be drafted in both languages. From primary school to university and in all cultural institutions, means of education, research and communication, such as journalism, publishing, radio and television, etc., will be provided in both languages.

The democratic culture of the Kurdish nation will be able to develop through the removal of the pressures that have been exerted on it up till now. Those in power will strive for free democratic cultural exchange with Turks and Kurds in other countries and an international culture common to all nations of the world to flourish in a pluralist and active environment.

All bodies in power will endeavour [on the one hand] to eradicate, with all its foundations, the former culture idolising violence and advocating the use of force to solve problems between nations and in society and [on the other hand] to spread among the people an internationalist proletarian culture that respects mankind and despises violence.

Against the fundamentalist nationalist culture according to which the history of the lands in which we live began with the war of Malazgirt and against all other forms of nationalism will be developed an internationalist, universal, humanitarian and democratic culture that will seek new cultural sources, enriched by the contribution of different peoples stemming from the historic depths of our country, and will draw on those resources. Original names will no longer be changed as they reflect the wealth of our country's universal culture; every place will be called by its known, established name." (pages 16–20)

2. *Oral statements by the Chairman of the Socialist Party*

(a) At the opening ceremony of the Socialist Party Congress (24–25 August 1991)

“The Socialist Party is the last bridge between the Kurdish and Turkish people... The current status quo has failed with respect to the Kurdish problem and its deafening collapse can be heard from here... What is the only possible solution? ... This issue can only be resolved by respecting the wish of the Kurdish people ... the real remedy lies with the Kurdish people. We will ask the Kurds: 'What do you want?' ... if, conversely,

they seek secession, we will respect their wish. We will organise a referendum. We will ask the Kurdish people ..., everyone, from Hakkari to Antep: 'Do you want to create a separate State in our land or not?' The Socialist Party prefers unification... Who is inciting secession? Oppression [is]. The oppression of the Kurdish people by the Turkish State. We will defend unification by putting an end to that oppression and that will be proof of [our] acceptance of the Kurdish people's will... The Socialist Party will defend the union of the two peoples within the federation and the joint [exercise] of power... The Socialist Party is the last bridge between the Kurdish and Turkish people... No party other than the Socialist Party has shared the Kurds' destiny, taken up a position against the Turkish State or is able to maintain that position.”

(b) During a television programme on 11 October 1991

“... Let us now define [what they call] internal security. That is the Kurdish problem. If you put it in terms of internal security ..., you will have recourse to the gendarmes. If the problem is seen as a Kurdish one, you will resolve it by democracy and freedom. In fact, it is the present regime that has transformed the Euphrates into a border... It was an economic border... Then, they made the Euphrates a political border ... and, lastly, an ideological one... Turkish nationalism has drowned in the Euphrates; it cannot cross it ... because nationalism has no place in these lands... There is a Turkish problem but also a Kurdish problem ... a fraternal solution will come from the Socialist Party. The [other] five parties have become separatist ... because they were nationalist. We offer a fraternal solution, a federation. The Kurdish nation should be given the right to self-determination. That is how the right conditions for unification will come about... Union cannot be achieved through force. Your solutions have failed. You will see, the Socialist Party solution will prevail.”

(c) At a public meeting in Ankara on 13 October 1991

“... we will put a stop to the special war being [waged] in the east ... we will end it by replacing it with a programme of brotherhood between Kurds and Turks ... and, lastly, on a structural level, a federation in which both nations are on an equal footing... They say that they are troubled by the fact that the Euphrates is a border. Who made the Euphrates a border? They did! ... Free, voluntary union on an equal footing of the Kurdish and Turkish nations within a federation, provided that the Kurdish nation consents and so decides as master of its destiny and accepts it: that is the solution proposed by the Socialist Party. The two peoples, two nations are obliged [to accept]...”

(d) During a television programme on 13 October 1991

“... Because the Kurds of the village of Botan are standing up they are in the process of becoming their own masters... Is it you, the status quo, that has forbidden the use of the name 'Kurd'? The Kurdish people are standing up; they are becoming the centre of the debate; through their acts, they are imposing their identity and celebrating the Newroz!... The oppressed Kurds are establishing their Constitution, making laws.”

1. Name given to traditional New Year celebrations in the Middle East.

(e) At a public meeting at Şırnak on 16 October 1991

“... The Socialist Party says that the Kurdish problem cannot be resolved by soldiers or bullets. The solution lies in independence ... in equality. The Kurdish and Turkish nations should have the same rights. The Kurdish and Turkish nations will form a popular republic ... and then one of them will survive and the other be oppressed; that is indefensible... It is the Socialist Party that is with the oppressed Kurdish people... By standing up, the Kurdish people have begun to demonstrate the combat they have been waging for years... The Kurdish people will bring about a new revolution... The oppressed Kurdish people ... are coming to join the Socialist Party... Long live the awakening! Long live our people!”

(f) At a public meeting at Van on 17 October 1991

“... Turkish nationalism has drowned in the Euphrates... The State has oppressed the Kurdish people to the point of erasing their name, even of prohibiting its use; but bans come to nothing... The Kurdish reality is there and is asserting itself... Turks and Kurds remain brothers; there can be no brotherhood where there is slavery; there can be no brotherhood if one is master and the other slave; everyone should be equal and have the same rights... There can be no hope if Turks and Kurds do not unite... This equation should be noted down somewhere: the Turkish people plus the oppressed Kurdish people equals democracy, independence and freedom... Long live Kurdistan! ...”

Relying on an audiovisual recording of the latter meeting, Mr Perinçek nevertheless denied, at a hearing before the Constitutional Court on 12 May 1992, that he had uttered the last sentence.

C. Dissolution of the Socialist Party

14. On 28 November 1991 the Constitutional Court sent Principal State Counsel's application to the SP, whose counsel filed preliminary written observations on 29 January 1992 and full observations on 30 March 1992, in which they first requested a hearing or, at the very least, leave to make further submissions orally. The Constitutional Court acceded to the latter request only and heard the party Chairman, Mr Perinçek, on 12 May, who had ceased to be Chairman of the party a short time before.

Before the Constitutional Court the SP's representatives firstly contested the constitutionality of certain provisions of Law no. 2820 on which Principal State Counsel relied. They also argued that the court should not admit the SP's publications (see paragraph 13 above) in evidence against that party. They said that two of the publications were copies of a speech made by Mr Perinçek before his election as party Chairman on 6 July 1991; furthermore, they had been examined by the National Security Courts and found not to contravene the law (see paragraph 11 above).

The party representatives went on to point out that on 8 December 1988 the Constitutional Court had dismissed the first application to have the SP dissolved on the basis of its programme (see paragraph 10 above). They maintained that the court would be contradicting itself if it now decided to dissolve the SP purely because of Mr Perinçek's oral statements, which, in the case before the court, were merely reiterations of paragraph 31 of the programme, which had already been reviewed by the Constitutional Court. They noted, lastly, that since the enactment of Law no. 3713 (the Prevention of Terrorism Act) which had, in particular, repealed Article 142 of the Criminal Code (see paragraph 18 below), it was no longer illegal to carry on Marxist-Leninist activities; in their submission, if one political party was treated differently from the others, the aim pursued by the Turkish legislature would be defeated.

15. Pursuant to section 101 of Law no. 2820, the Constitutional Court made an order on 10 July 1992 dissolving the SP, which entailed *ipso jure* the liquidation of the party and the transfer of its assets to the Treasury, in accordance with section 107 of that Law. The order was published in the Official Gazette on 25 October 1992. As a consequence, the founders and managers of the party were banned from holding similar office in any other political body (former Article 69 of the Constitution – see paragraph 16 below).

In its judgment the Constitutional Court noted at the outset that the impugned publications of the SP bore the name and signature of its Chairman, Mr Perinçek, who was also the person who had made the oral statements on television. Those publications and statements accordingly also bound the SP and consequently were admissible as relevant evidence under section 101 of Law no. 2820.

The Constitutional Court did not consider that either its or the National Security Courts' earlier judgments (see paragraphs 10–11 above) in any way affected its examination of the case before it, which concerned the political activities of the party, not of its leaders. Moreover, it could not accept that the fact that a provision of the Criminal Code making it an offence to behave in a certain way had been repealed meant that similar conduct no longer constituted a valid ground for dissolution under Law no. 2820.

The Constitutional Court observed that unlike the issue that had been decided in its judgment of 8 December 1988, the one now before it was based on new facts and evidence and thus gave rise to a different question in law. It no longer had to be determined whether the programme and constitution of the SP were in conformity with the law, but solely whether its political activities were caught by the relevant prohibitions.

In reaching its decision on the merits, the Constitutional Court noted, *inter alia*, that the SP referred in its political message to two nations: the Kurdish nation and the Turkish nation. But it could not be accepted that there were two nations within the Republic of Turkey, whose citizens, whatever their ethnic origin, had Turkish nationality. In reality, the statements made by the SP concerning Kurdish national and cultural rights were intended to create minorities and, ultimately, the establishment of a Kurdish-Turkish federation, to the detriment of the unity of the Turkish nation and the territorial integrity of the Turkish State.

Like all nationals of foreign descent, nationals of Kurdish origin could freely express their identity, but the Constitution and the law precluded them from forming a separate nation and State. The SP was ideologically opposed to the nationalism of Atatürk, which was the most fundamental principle underpinning the Republic of Turkey.

The SP's political activity was also incompatible in aim with Articles 11 and 17 of the European Convention on Human Rights, since it was similar to that of terrorist organisations, notwithstanding a difference in the means employed.

In short, objectives which, like those of the SP, encouraged separatism and incited a socially integrated community to fight for the creation of an independent federated State were unacceptable and justified dissolution of the party concerned.

II. RELEVANT DOMESTIC LAW

A. The Constitution

16. 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 3 § 1

“The State of Turkey shall constitute with its territory and nation, an indivisible whole. The official language shall be Turkish.”

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 shall reside unconditionally and unreservedly in the nation.

...

Sovereign power shall not under any circumstances be transferred 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 belief, 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 sect, or establishing by any other means a political system based on any of the above concepts and opinions.”

Article 66 § 1

“Everyone linked to the Turkish State by nationality shall be Turkish.”

(Former) Article 68

“...

No political party shall be formed which aims to advocate or establish the domination of one social class or group, or any form of dictatorship...”

(Former) Article 69

“Political parties shall not engage in activities other than those referred to in their constitutions and programmes, nor shall they disregard the restrictions laid down by Article 14 of the Constitution, on pain of permanent dissolution.

...

The decisions and internal running of political parties shall not be contrary to democratic principles.

...

Immediately a political party is formed, Principal State Counsel shall verify as a matter of priority that its constitution and programme and the legal position of its founding members are consistent with the Constitution and the laws of the land. He shall also monitor its activities.

Political parties may be dissolved by the Constitutional Court, on an application by Principal State Counsel.

Founding members and managers, at whatever level, of political parties which have been permanently dissolved may not become founding members, managers or financial controllers of any new political party...”

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

17. The relevant provisions of Law no. 2820 on the regulation of political parties read as follows:

Section 78

“Political parties

(a) shall not aim, strive or incite third parties to

change the republican form of the Turkish State; the ... provisions concerning the absolute integrity of the Turkish State's territory, the absolute unity of its nation, its official language, its flag or its national anthem; ... the principle that sovereignty resides unconditionally and unreservedly in the Turkish nation; ... the provision that sovereign power cannot be transferred to an individual, a group or a social class...;

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.

...

(c) shall not aim to defend or establish the domination of one social class over the other social classes or the domination of a community or the setting up of any form of dictatorship; they shall not carry on activities in pursuit of such aims..."

Section 80

"Political parties shall not aim to change the principle of the unitary State on which the Turkish Republic is founded, nor carry on activities in pursuit of such an aim."

Section 81

"Political parties shall not

(a) assert that there exist within the territory of the Turkish Republic any national minorities based on differences relating to national or religious culture, membership of a religious sect, race or language; or

(b) aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating a non-Turkish language or culture, to create minorities on the territory of the Turkish Republic or to engage in similar activities..."

Section 90(1)

"The constitution, programme and activities of political parties may not contravene the Constitution or this Law."

Section 101

"The Constitutional Court shall dissolve a political party whose

(a) constitution or programme ... is contrary to the provisions of Chapter 4 of this Law;

(b) membership, central committee or executive committee ... take a decision, issue a circular or make a statement ... contrary to the provisions of Chapter 4 of this Law ..., or whose Chairman, Vice-Chairman or General Secretary makes any written or oral statement contrary to those provisions...

(c) representative appointed ... by the administrative committee ..., makes oral statements on radio or television that are contrary to the provisions ... of this Law..."

Section 107(1)

"All the assets of political parties dissolved by order of the Constitutional Court shall be transferred to the Treasury."

Chapter 4 of the Law, which is referred to in section 101, includes in particular section 90(1), which is reproduced above.

C. The Criminal Code

18. At the material time Article 142 of the Criminal Code provided:

"Harmful propaganda

1. A person who by any means whatsoever spreads propaganda with a view to establishing the domination of one social class over the others, annihilating a social class, overturning the fundamental social or economic order established in Turkey or destroying the entire political or judicial order of the State shall, on conviction, be liable to a term of imprisonment of between five and ten years.

2. A person who by any means whatsoever spreads propaganda in favour of the State's being governed by an individual or social group to the detriment of republicanism or democratic principles shall, on conviction, be liable to a term of imprisonment of between five and ten years.

3. Any person who by any means whatsoever spreads propaganda inspired by racist theories aimed at abolishing in whole or in part public-law rights as guaranteed by the Constitution or undermining or eliminating patriotic sentiment shall, on conviction, be liable to a term of imprisonment of between five and ten years.

..."

PROCEEDINGS BEFORE THE COMMISSION

19. The applicants applied to the Commission on 31 December 1992. They maintained that the dissolution of the SP by the Constitutional Court had infringed:

(i) Article 6 §§ 1 and 2 and Articles 9, 10, and 11 of the Convention, taken individually and together with Articles 14 and (in the case of Articles 9, 10 and 11) 18 of the Convention;

(ii) Articles 1 and 3 of Protocol No. 1.

20. On 6 December 1994 the Commission declared the complaint under Article 6 § 2 of the Convention inadmissible and the remainder of the application (no. 21237/93) admissible.

21. In its report of 26 November 1996 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 11 of the Convention but no violation of Article 6 § 1, that no separate issue arose under Articles 9 and 10 and that it was unnecessary to consider separately the complaints under Articles 14 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

22. In their memorial, the Government "... asked the Court to declare that there had been no violation of Articles 6, 9, 10, 11, 14 or 18 of the Convention or of Articles 1 or 3 of Protocol No. 1".

23. The applicants asked the Court to hold that there had been a breach of the rights guaranteed by the aforementioned provisions of the Convention and Protocol No. 1.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

24. The applicants maintained that the fact that the Socialist Party ("the SP") had been dissolved and its leaders banned from holding similar office in any other political party had infringed their right to freedom of association, as guaranteed by Article 11 of the Convention, which provides:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

¹ *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. Applicability of Article 11

1. Submissions of those appearing before the Court

(a) The applicants

25. The applicants maintained that there was no doubt that political parties came within the ambit of Article 11.

(b) The Government

26. In their memorial the Government submitted that Article 11 did not in any event apply to political parties. Where in its constitution or programme a party attacked a State's constitutional order, the Court should declare the Convention to be inapplicable *ratione materiae* or apply Article 17.

27. The SP had intended through its activities unambiguously to break with Turkey's fundamental constitutional principles. It was apparent from what the SP said that the party considered that citizens of Kurdish origin had “nation” and “people” status and the right to “found a separate State”, that it advocated the setting up of a federation, without moreover excluding the creation of other federated bodies entitled to open consulates in other countries. As that amounted to challenging the very basis of the State, the Constitutional Court had had to review the constitutionality of that political aim. In so doing, it had followed the line taken by the German Constitutional Court in its judgment of 31 October 1991 on the right of foreign nationals to vote in local elections and by the French Constitutional Council in its decision of 9 May 1991 on the status of Corsica.

In the Government's submission, the States Parties to the Convention had at no stage intended to submit their constitutional institutions, and in particular the principles they considered to be the essential conditions of their existence, to review by the Strasbourg institutions. For that reason, where a political party such as the SP had called those institutions or principles into question, it could not seek application of the Convention or its Protocols, since it was not the SP's freedom of association that was in issue in the present case, but the right to self-determination, which did not come within the compass of the Convention.

At the very least, Article 17 of the Convention should be applied in respect of the SP since the party sought to justify the use of violence and to promote hatred of the Turkish State and the wrongful division of an entire people into two opposing camps. In so doing, the SP had said the same things as the Workers' Party of Kurdistan ("the PKK"), without distancing itself from any of the latter's methods. Moreover, the Constitutional Court had, in its judgment ordering the dissolution of the SP, recognised that Article 17 was relevant in the case of the SP and concluded that the party's activities were covered by that provision.

(c) The Commission

28. The Commission expressed the opinion that there was nothing in the wording of Article 11 to limit its scope to a particular form of association or group or to suggest that it did not apply to political parties. On the contrary, if Article 11 was considered to be a legal safeguard that ensured the proper functioning of democracy, political parties were one of the most important forms of association it protected. In that connection, the Commission referred to a number of decisions in which it had examined, under Article 11, various restrictions on the activities of political parties and even the dissolution of such parties, thereby implicitly accepting that Article 11 applied to that type of association (see the German Communist Party case, application no. 250/57, Yearbook 1, p. 225; the Greek case, Yearbook 12, p. 170, § 392; the France, Norway, Denmark, Sweden and the Netherlands v. Turkey case, applications nos. 9940–9944/82, Decisions and Reports 35, p. 143).

At the hearing before the Court the Delegate of the Commission also said that it was unnecessary to apply Article 17 of the Convention, since neither the SP's programme nor the statements made by Mr Perinçek that were in issue indicated that they had sought to destroy the rights and freedoms protected by the Convention.

2. The Court's assessment

29. In its judgment in the case of United Communist Party of Turkey and Others v. Turkey, the Court held that political parties are a form of association essential to the proper functioning of democracy and that in view of the importance of democracy in the Convention system, there can

be no doubt that political parties come within the scope of Article 11. The Court noted on the other hand that an association, including a political party, is not excluded from the protection afforded by the Convention simply because its activities are regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions (see the *United Communist Party of Turkey and Others v. Turkey* judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 17, §§ 25 and 27). The Court sees no reason to come to a different conclusion in the instant case.

As to the application of Article 17, the Court will deal with it after considering the question of compliance with Article 11 (see paragraph 53 below).

B. Compliance with Article 11

1. Whether there was an interference

30. All those appearing before the Court acknowledged that the SP's dissolution amounted to an interference in the three applicants' right to freedom of association. That is also the Court's view.

2. Whether the interference was justified

31. Such an interference will constitute a breach of Article 11 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims.

(a) "Prescribed by law"

32. It was common ground that the interference was "prescribed by law", as the measures ordered by the Constitutional Court were based on Articles 2, 3 § 1, 6, 10 § 1 and 14 § 1 and former Article 68 of the Constitution and sections 78, 81 and 96(3) of Law no. 2820 on the regulation of political parties (see paragraphs 16–17 above).

(b) Legitimate aim

33. The Government maintained that the interference pursued a number of legitimate aims: ensuring national security, public safety and territorial integrity and protecting the rights and freedoms of others. If the Court had accepted, as it had done in the *Hadjianastassiou v. Greece* judgment of 16 December 1992 (Series A no. 252), that an isolated case of espionage could harm national security, there was all the more reason to reach a similar conclusion where, as in the instant case, the very existence of a State Party to the Convention was threatened.

34. The applicants observed that before the Constitutional Court Principal State Counsel had at no stage relied on either national security or public safety.

35. The Commission considered that prohibiting activities which, in the authorities' view, were likely to cause the collapse of the State or the division of its territory could be said to be intended to protect "national security" and territorial integrity.

36. The Court considers that the dissolution of the SP pursued at least one of the legitimate aims set out in Article 11: the protection of "national security".

(c) "Necessary in a democratic society"

i. Submissions of those appearing before the Court

(α) The applicants

37. The applicants said that in a pluralist democratic and parliamentary system, people should have the right to express their opinion on the Kurdish problem and on how to resolve it. The SP was a political party supported by a sector of public opinion which should have had the right to accede to power.

The SP bore no resemblance to the German Communist Party that had been dissolved at the time by the German Federal Constitutional Court (see application no. 250/57, Yearbook 1, p. 225). Otherwise, the Turkish Constitutional Court would not have dismissed, on 8 December 1988, the first application for the SP to be dissolved (see paragraph 10 above). In that decision the Constitutional Court had found the party's constitution and programme to be in accordance with the Constitution and that it was part of the country's democratic system and clearly opposed terrorism.

The SP had never acted unlawfully and the best proof of that was that its then Chairman, Mr Perinçek, was now Chairman of another political party, the Workers' Party, and carried on his work quite lawfully.

The SP had always defended the union of the Turkish State. The federal system it proposed as a solution to the Kurdish problem would not prevent State unity. Germany and Switzerland were federations and no one saw in that status a programme to divide those countries. As for Turkey, federation would, on the contrary, afford a much more reliable solution for the future.

(β) The Government

38. In the Government's submission, any resemblance between the present case and that of the United Communist Party of Turkey ("the TBKP") was in appearances only, the sole real similarity lying in the

fact that both parties had been dissolved by an order of the Constitutional Court. In the case of the TBKP the Constitutional Court's task had been to assess whether the party's programme and constitution complied with the Constitution and the Law on the regulation of political parties. In the case of the SP on the other hand – as the Constitutional Court had clearly explained in its judgment – the court had had to assess whether the SP's activities subsequent to its formation were consistent with those documents.

After the first review of the constitutionality of the party (see paragraphs 9–10 above), new facts and evidence had come to light concerning the SP's activities, which the Commission, unlike the Constitutional Court, had failed to take into account. They showed that from 1990, and in particular in 1991, the SP's activities had shifted radically away from its initial approach reflected in its constitutive documents and were directed towards the disruption of the fundamental concepts which have inspired the Republic of Turkey since its formation.

The shift was to be seen in particular in the speeches made by the SP's Chairman, Mr Perinçek, at meetings, congresses or political rallies, some of which were later published by the party. He had used violent, aggressive and provocative language, denigrated all the other political parties and sought to vindicate the use of violence and terrorist methods by calling for an uprising through the use, *inter alia*, of the expression “*Ayağa kalk*”, which meant “stand up”. The Constitutional Court consequently found that the language and methods of the SP were not at all consistent with its calls for brotherhood and equality.

39. Referring to the Court's analysis of the situation in Turkey in its judgment in the case of *Zana v. Turkey* of 25 November 1997 (*Reports* 1997-VII), the Government said that in 1990 and 1991 there had been an intolerable increase in terrorist activity that had caused thousands of deaths and had spared neither women nor children. Against that background, the declarations of a well-known political leader were bound to aggravate the violence and hatred. In such cases, the authority to the effect that freedom of expression also applied to statements that offended, shocked or disturbed bore no relevance. In the present case, the Court was not concerned with a political debate on political and economic issues of interest to the whole country, but with incitement to join a bloody and murderous conflict between two sections of the population which enjoyed, without any discrimination, all the rights and liberties defined by the Constitution and statute.

In that connection, the Government referred, as they had done in the TBKP case (see the judgment cited above, pp. 23–24, § 49), to the Commission's case-law whereby if the interference pursued as a legitimate aim the protection of public order, territorial integrity, the public interest or democracy, the Convention institutions did not require that the risk of violence justifying the interference should be real, current or imminent.

Nor was it at all relevant to rely on Mr Perinçek's acquittals before the National Security Courts in order to contest the necessity of the interference in issue, as two types of proceedings, pursuing entirely different aims, were involved: the first type was criminal proceedings, in which the court ruled on an individual's personal responsibility, whereas in the second type of proceedings – constitutional proceedings, such as those impugned before the Court – the sole issue was whether a political party was compatible with the Convention and that necessitated applying different criteria.

(γ) The Commission

40. The Commission considered that the SP's dissolution had not been necessary in a democratic society. It noted that Mr Perinçek had previously been prosecuted in the criminal courts for making statements to the same effect as those made in the present case, but had been acquitted of the charges against him. The Commission inferred that even in the eyes of the Turkish judicial authorities, the publications did not contain anything intended to encourage extremist or terrorist groups to destroy the constitutional order of the State or to found a Kurdish State through the use of force.

The Commission also observed that the SP had sought to achieve its political aims solely through lawful means and that it had not been shown that the SP had had any intention of destroying Turkey's democratic and pluralist order or had advocated infringing fundamental human rights by promoting racial discrimination.

ii. The Court's assessment

41. The Court reiterates that notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as 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.

As the Court has emphasised many times, 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. The fact that their activities form part of a collective exercise of freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention. (see, among other authorities, the United Communist Party of Turkey and Others judgment cited above, pp. 20–21, §§ 42–43).

42. In the instant case it must first be noted that in its judgment of 10 July 1992 the Constitutional Court held that on that occasion it no longer had to consider whether the SP's programme and constitution were lawful, but only whether its political activities contravened the statutory prohibitions. In dissolving the party, the Constitutional Court had had regard to public statements – some of them in written form – made by Mr Perinçek which it considered to constitute new facts and evidence that were binding on the SP (see paragraph 15 above). Consequently, the Court may confine itself to examining those statements.

43. The Constitutional Court noted that, by distinguishing two nations – the Kurdish nation and the Turkish nation – Mr Perinçek had advocated the creation of minorities within Turkey and, ultimately, the establishment of a Kurdish-Turkish federation, to the detriment of the unity of the Turkish nation and the territorial integrity of the State. The SP was ideologically opposed to the nationalism of Atatürk, which was the most fundamental principle underpinning the Republic of Turkey. Although different methods were used, the aim of the SP's political activity was similar to that of terrorist organisations. As the SP promoted separatism and revolt its dissolution was justified (see paragraph 15 above).

44. In the light of these factors, the Court must firstly consider the content of the statements in issue and then determine whether they justified the dissolution of the SP.

With regard to the first issue the Court reiterates that when it carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. In so doing, the Court has to satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts (see, *mutatis mutandis*, the United Communist Party of Turkey and Others judgment cited above, p. 22, § 47).

45. Further, the Court has previously held that 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 (see the United Communist Party of Turkey and Others judgment cited above, p. 27, § 57).

46. Having analysed Mr Perinçek's statements, the Court finds nothing in them that can be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. On the contrary, he stressed on a number of occasions the need to achieve the proposed political reform in accordance with democratic rules, through the ballot box and by holding referenda. At the same time, he spoke out against "the former culture idolising violence and advocating the use of force to solve problems between nations and in society" (see paragraph 13 above).

At the hearing the Agent for the Government stated that Mr Perinçek had "justified the use of violent and terrorist methods" by saying in particular: "The Kurd has proved himself through the fight of impoverished peasants by linking its destiny [to theirs]. By holding meetings with thousands of people in the towns and provinces, the Kurd had proved himself and broken down the barriers of fear." Furthermore, by calling on those present to "sow courage, rather than watermelons", Mr Perinçek had, in the Government's submission, "exhorted them to stop all activities other than the destruction of order". Lastly, by using the phrase "The Kurdish people are standing up" he had called upon them to revolt.

While the Court accepts that these phrases were directed at citizens of Kurdish origin and constituted an invitation to them to rally together and assert certain political claims, it finds no trace of any incitement to use violence or infringe the rules of democracy. In that regard, the relevant statements were scarcely any different from those made by other political groups that were active in other countries of the Council of Europe.

47. The Constitutional Court had also criticised Mr Perinçek for having drawn a distinction between two nations, the Kurdish nation and the Turkish nation, in his speeches and of thereby pleading in favour of creating minorities and the establishment of a Kurdish-Turkish federation, to the detriment of the unity of the Turkish nation and the territorial integrity of the State. Ultimately, the SP had advocated separatism.

The Court notes that, read together, the statements put forward a political programme with the essential aim being the establishment, in accordance with democratic rules, of a federal system in which Turks and Kurds would be represented on an equal footing and on a voluntary basis. Admittedly, reference is made to the right to self-determination of the "Kurdish nation" and its right to "secede"; however, read in their context, the statements using these words do not encourage secession from Turkey but seek rather to stress that the proposed federal system could not come about without the Kurds' freely given consent, which should be expressed through a referendum.

In the Court's view, the fact that such a political programme is considered incompatible with the current principles and structures of the Turkish State does not make it incompatible with the rules of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself.

48. It is true here too that, as was the case with the TBKP (see the United Communist Party of Turkey and Others judgment cited above, p. 27, § 58), it cannot be ruled out that the statements in issue concealed objectives and intentions different from the ones proclaimed in public. In the absence of concrete actions belying Mr Perinçek's sincerity in what he said, however, that sincerity should not be doubted. The SP was thus penalised for conduct relating solely to the exercise of freedom of expression.

49. The Court also notes that Mr Perinçek was acquitted in the National Security Courts where he had been prosecuted in respect of the same statements (see paragraph 11 above). In that connection the Government stressed that the two types of proceedings were entirely different, one concerning the application of criminal law, the other the application of constitutional law. The Court merely notes that the Turkish courts had divergent views as to the effect of Mr Perinçek's statements.

It is now important to determine whether, in the light of the above considerations, the SP's dissolution can be considered to have been necessary in a democratic society, that is to say whether it met a "pressing social need" and was "proportionate to the legitimate aim pursued" (see, among many other authorities and *mutatis mutandis*, the Vogt v. Germany judgment of 26 September 1995, Series A no. 323, pp. 25–26, § 52).

50. The Court reiterates that, having regard to the essential role of political parties in the proper functioning of democracy (see the United Communist Party of Turkey and Others judgment cited above, p. 17, § 25), 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, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see the United Communist Party of Turkey and Others judgment cited above, p. 22, § 46).

51. The Court observes that the interference in question was radical: the SP was dissolved with immediate and permanent effect, its assets were liquidated and transferred *ipso jure* to the Treasury and its leaders – who admittedly did not include Mr Perinçek when the party was dissolved (see paragraph 14 above) – were banned from carrying on certain similar political activities. Measures as severe as those may only be applied in the most serious cases.

52. The Court has already noted that Mr Perinçek's statements, though critical and full of demands, did not appear to it to call into question the need for compliance with democratic principles and rules.

The Court is prepared to take into account the background of cases before it, in particular the difficulties associated with the prevention of terrorism (see, among other authorities, the United Communist Party of Turkey and Others judgment cited above, p. 27, § 59). In the present case, however, it has not been established how, in spite of the fact that in making them their author declared attachment to democracy and expressed rejection of violence, the statements in issue could be considered to have been in any way responsible for the problems which terrorism poses in Turkey.

53. In view of the findings referred to above, there is no need either to bring Article 17 into play, as nothing in the statements warrants the conclusion that their author relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it (see, *mutatis mutandis*, the United Communist Party of Turkey and Others judgment cited above, p. 27, § 60).

54. In conclusion, the dissolution of the SP was disproportionate to the aim pursued and consequently unnecessary in a democratic society. It follows that there has been a violation of Article 11 of the Convention.

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

55. The applicants also maintained that there had been breaches of Articles 9, 10, 14 and 18 of the Convention. As their complaints relate to the same facts the Court considers it unnecessary to examine them separately.

III. ALLEGED VIOLATIONS OF ARTICLES 1 AND 3 OF PROTOCOL No. 1

56. The applicants further submitted that the effects of the SP's dissolution – its assets were confiscated and transferred to the Treasury, and its leaders were banned from taking part in elections – entailed a breach of Articles 1 and 3 of Protocol No. 1, which provide:

Article 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Article 3

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

57. The Court notes that the measures complained of by the applicants were incidental effects of the SP's dissolution, which the Court has held to amount to a breach of Article 11. It is consequently unnecessary to consider those complaints separately.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

58. Lastly, the applicants complained that instead of holding a public hearing, the Constitutional Court had heard them merely in camera and that they had not had access to the case file or the verbatim record of the hearing. They considered that that amounted to a breach of Article 6 § 1 of the Convention.

59. Neither the Government nor the Commission considered that Article 6 § 1 was applicable on the facts of the case.

60. In view of its conclusion concerning compliance with Article 11, the Court considers that it is unnecessary to examine this complaint.

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION

61. Article 50 of the Convention provides:

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Annulment of the order for dissolution

62. The applicants firstly requested the annulment of the Constitutional Court's order of 10 July 1992 dissolving the SP. They also sought “recognised political-party status” for the SP.

63. The Court holds that it has no jurisdiction under the Convention to order these measures (see, *mutatis mutandis*, the Saïdi v. France judgment of 20 September 1993, Series A no. 261-C, p. 57, § 47).

B. Damage and costs and expenses

64. In respect of pecuniary damage the applicants claimed 1,500,000 US dollars (USD): USD 1,000,000 for the SP and USD 250,000 each for Mr Doğu Perinçek and Mr İlhan Kırıt. They sought USD 6,000,000 for non-pecuniary damage, that is USD 2,000,000 for each applicant.

In support of their claims they stressed that the SP had had more than 400 offices spread over the whole of Turkey, all its assets had been seized, it had had the right to present candidates at the elections, had taken part in the elections and was the only left-wing socialist party in existence when it was dissolved. According to the applicants, the thousands of people who had helped to form the SP – which had been active for four years before its dissolution – and the leaders of that party had sustained substantial non-pecuniary damage and financial loss.

The applicants also sought “reimbursement of all the costs to which the case had given rise”. At the hearing before the Court, they explained that the fees and costs of the 308 lawyers who had represented the SP before the Constitutional Court alone had come to 1,955,800 French francs (FRF). As to the costs of the applicants' representation before the Convention institutions, they had come to FRF 300,000.

65. As its main submission, the Government considered that no compensation was payable in this case. In the alternative, they considered the applicants' claims exorbitant. In the further alternative, they argued that a violation of Article 11 only could not confer on the applicants a right to be compensated individually.

As to the alleged pecuniary damage, the Government affirmed that it had no causal link with the SP's dissolution, that political parties and their leaders could not be equated with commercial undertakings and that in any event there was no supporting accounting evidence for the claims.

As for the claims in respect of non-pecuniary damage, the Government considered them to be “even more unreliable” since not only were they exorbitant but they included a claim for non-pecuniary damage allegedly sustained by the SP itself.

Lastly, as regards the claims for costs and expenses, the Government found them to be insufficiently detailed.

66. The Delegate of the Commission submitted that the applicants' presentation – which was very general and hypothetical – was insufficient to allow their claims under Article 50 to be upheld.

67. The Court notes that the applicants have not furnished any evidence in support of their claims for substantial sums in respect of pecuniary damage and costs and expenses. Consequently, it cannot uphold those claims (see, *mutatis mutandis*, the *Pressos Compania Naviera S.A. and Others v. Belgium* judgment of 3 July 1997 (*Article 50*), *Reports 1997-IV*, p. 1299, § 24). It notes, however, that the applicants received FRF 57,187 in legal aid paid by the Council of Europe.

As to non-pecuniary damage, the Court notes that, unlike the TBKP, the SP's constitution and programme were approved by the Constitutional Court and the party was active for four years before being dissolved by it. Mr Perinçek and Mr Kırıt therefore sustained definite non-pecuniary damage. Making its assessment on an equitable basis, the Court assesses that damage at FRF 50,000 each.

C. Default interest

68. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 11 of the Convention;
2. *Holds* that it is unnecessary to determine whether there has been a violation of Articles 6 § 1, 9, 10, 14 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay Mr Perinçek and Mr Kırıt, within three months, a total sum of 50,000 (fifty thousand) French francs each in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of payment;

(b) that simple interest at an annual rate of 3.36% shall be payable on that sum from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 May 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar