Strasbourg, 7 February 2006

CDL-JU(2006)002
Engl. only

CoCoSem 2006/01

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

in co-operation with

THE CONSTITUTIONAL COURT OF GEORGIA

Conference on

"The protection of electoral rights and the right to political associations by the Constitutional Court"
Tbilisi, Georgia
10–11 February 2006

The Suppression of Political Parties

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My intention in this brief paper is to address two questions, firstly, in what circumstances may a political party be suppressed without infringing the provisions of the European Convention on Human Rights, and secondly, in what circumstances may the registration of a newly formed political party be refused? A brief reflection will show that the two questions are in essence the same, but nevertheless there are some special aspects of political party registration which are worth referring to.

The European Convention on Human Rights

The starting point for the discussion in the European context is, of course, Article 11 and Article 10 of the European Convention on Human Rights.

Article 11, which protects the right to freedom of peaceful assembly an to freedom of association, provides as follows:-

> *"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.*
>
> *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."*

Article 10, which guarantees the right to freedom of expression, provides as follows:-

> *"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
> 2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

I propose to discuss three judgments of the European Court of Human Rights which illustrate the Courts approach to the conditions which may justify the suppression of a political party.

In the case of *United Communist Party of Turkey and Others v Turkey* (133/1996/752/951) the Court in its judgement of 30 January 1998 stated that in view of the importance of democracy in the Convention system there could be no doubt that political parties came within the scope of Article 11 (§25). Article 11 protected not only the right to form an

association but also had the effect that thessolution by a country's authorities must satisfy the requirements of Article 11 paragraph 2 (§33).

The Court reiterated that notwithstanding the autonomous role and particular sphere of application of Article 11 that Article must also be considered in the light of Article 10. The protection of opinions and the freedom to express them was one of the objectives of the freedoms of assembly and association as enshrined in Article 11 (§42). The Court continued (at §43)

> "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 said many times, there can be no democracy without pluralism. It is for that reason that freedom of expression 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."

Recalling that interference with the exercise of the rights enshrined in Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is "necessary in a democratic society", the Court had the following to say

> *"Consequently, 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. The Court has already held that such scrutiny was necessary in a case concerning a Member of Parliament who had been convicted of proffering insults; such scrutiny is all the more necessary where an entire political party is dissolved and its leaders banned from carrying on any similar activity in the future."*

The Court went on to analyse the factual circumstances in which the United Communist Party of Turkey had been banned. The Court was not prepared to find that the party's choice of the name "communist" could in principle justify the decision to ban the party, in the absence of other relevant and sufficient circumstances. In this connection the Court noted that the Turkish Constitutional Court had found that the party was not seeking, in spite of its name, to assert the domination of one class over the others. On the contrary, it satisfied the requirements of democracy, including political pluralism, universal suffrage, and freedom to take part in politics. The case was thus different from that of the German Communist Party, dissolved in 1956. (§53-54)

On a separate point, the Court considered the Turkish Constitutional Court's finding that the party sought to promote separatism. The Constitutional Court had found that by drawing a distinction in its constitution and programme between the Kurdish and Turkish nations thereby revealing its intention of working to achieve the creation of minorities which posed a threat to the State's territorial integrity. The Turkish Constitution proscribed both self-determination of minorities and regional autonomy, providing that Turkey was a unitary state.

However, the Court pointed out that although the Party's programme referred to the Kurdish "people" and "nation" and to Kurdish "citizens" it made no claim for special treatment or rights, or for secession. Its programme sought "a peaceful, democratic and fair solution of the Kurdish problem, so that the Kurdish and Turkish peoples may live together of their free will within the borders of the Turkish Republic, on the basis of equal rights and with a view to democratic restructuring founded on their common interests" (§56).

The Court concluded

> "The Court considers one of the principal characteristics of democracy to be 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. To judge by its programme, that was indeed the TBKP's objective in this area. That distinguishes the present case from those referred to by the Government."

In a subsequent case, *Freedom and Democracy Party (ÖZDEP) v Turkey* (Application No. 23885/94) the Court also found against Turkey. In that case the Party concerned had gone further than the TBKP, insofar as it did advocate the right to self-determination of national minorities, although the Court considered that taken in context the Party's programme did not mean these words to encourage separation but that the solution to the Kurdish problem must have the consent of the Kurds. The Court regarded it as an essential factor in the case that nothing in the Party's programme could be considered a call for the use of violence or any other form of rejection of democratic principles. The fact that the Party's proposals were incompatible with the current principles and structures of the Turkish State did not mean they were incompatible with democratic rules. The Court concluded that the Party's dissolution was a disproportionate response which was unnecessary in a democratic society and therefore in breach of Article 11.

The third case I want to refer to is that of *Refah Partisi (The Welfare Party) and others v Turkey* (Applications Nos 41430/98, 41342/98, 413443/98 and 41344/98, Judgement of 13 February 2003).

The Refah party sought to abolish secularism in Turkey. At the time of its dissolution it was the largest party in Turkey, and its leader was the Prime Minister in a centre-right coalition. On previous occasions the party had been in power, and had left office when it lost support.

The Court upheld the suppression of Refah. The finding was based, not on anything in the Party's programme, but on a series of speeches and made by party leaders and various other incidents involving prominenet party members which had not been repudiated by the Party. These included incitement to wear headscarves in public buildings in breach of the law, speeches advocating the restoration of the former Ottoman practice under which each religious grouping had its own law, calls to join a jihad, threats that blood would flow if religious schools were closed, and a visit by the Minister for Justice to a member of parliament detained in prison awaiting a charge of vindicating international Islamist terrorist

groups. The Court's support for the suppression of Refah was based on the proposition that suppression of the party pursued the several legitimate aims under which an interference with the rights in Article 11 may be justified, that is to say, national security, public safety, prevention of disorder or crime, and protection of the rights and freedoms of others.

The Court stated that there were two conditions on which a political party might promote a change in the law or the legal and constitutional structures of the State:-

> "On that point, the Court considers that a political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic, secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds." (§98)

Not all members of the Court were entirely comfortable with the paragraph just quoted. In his concurring opinion Judge Ress (joined by Judge Rozakis) said the following:

> "The formulation in paragraph 98 of the judgment should in my view not be understood to exclude for more or less minor illegalities the application of the principle of proportionality in relation to sanctions such as dissolution of a party. In respect of a possible dissolution of the party the following sentence relating to a situation where party leaders incite to violence or put forward a political programme which fails to respect basis rules of democracy or which is even aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy is a more reliable guide. But even there one should be prudent and not overstep the limits set out in other decisions and judgments of the Court. It is difficult to give an exhaustive list of the rules of democracy, apart from the basic ones. It is without doubt correct to say that parties that aim at the destruction of democracy cannot enjoy protection against even such drastic measures as dissolution. But whether the failure to respect this or that rule of democracy justifies dissolution or whether a less drastic measure is the only appropriate and adequate one is again a question that has to be judged with regard to the principle of proportionality. Furthermore, the last part relating to the flouting of the rights and freedoms recognised in a democracy must be seen in the context of the very basic rights and freedoms. In my view it cannot be interpreted to the effect that any campaign to change rights and freedoms recognised in a democracy amount to a situation where a political party would lose protection. In this respect also all depends on the specific rights and freedoms which a political party aims to change and furthermore what kind of change or modification is envisaged. So the very general sentences of paragraph 98 of the judgement need some further clarification and limitation in the light of the principle of proportionality and in the light of the judgments which are quoted at the end of that paragraph."

It seems clear that a failure to meet either of the two conditions referred to in paragraph 98 can, according to the judgement, justify the suppression of a political party. It follows, therefore, that a party whose programme is incompatible with fundamental democratic principles may, under the Court's interpretation of the ECHR, be suppressed, even though it proposes to bring about such fundamental changes by peaceful means and has the support of a majority. However, it should be pointed out that the Court reiterated that the exceptions in Article 11 are to be construed strictly and only convincing and compelling reasons can justify their being invoked. Dissolution of a party could be justified only in the most serious cases. Nevertheless the judgment has very far-reaching consequences.

A difficulty with the judgment is that, interpreted strictly, it could even be used to justify banning a political party which campaigned for a change in the human rights regime or against the philosophy underlying that regime, even if it did so peacefully and even if it had the support of a majority of a population or even, as Judge Ress pointed out, if its campaign is confined to certain rights and freedoms. Of course, it has to be conceded that in the *Refah* case there were elements of violence as well as of incitement to break the law, and it remains to be seen whether the Court would in fact follow the logic of its position were the facts as stated above. It is interesting to compare the Court's approach with that of the Belgian Court of Arbitration (BEL-2001-1-001; Codices 2004/3) in upholding the Belgian law which allowed a political party to lose part of its state funding if it showed manifest hostility towards rights guaranteed by the Convention. The Court held, however, that these provisions should be interpreted strictly and not be used to allow a party which had merely called for some rule in the Convention to the reinterpreted or revised or which had criticised the underlying philosophy or ideology of the Conveniton. In this respect the Belgian case appears to echo the concurring opinion of Judge Ress in *Refah*.

The Venice Commission Guidelines

The Venice Commission has issued three sets of guidelines relating to political parties. They are the *Guidelines on the prohibition of political parties and analogous measures*[1], the *Guidelines on the financing of political parties*[2] and the Guidelines and explanatory report on *legislation on political parties: some specific issues*[3]. The first and third of these are relevant to the subject of the seminar and contain some material relating to issues not disclosed in the case-law of the ECHR.

The guidelines on the prohibition and dissolution of political parties, adopted on 10-11 December 1999, are as follows:-

(i) States should recognise that everyone has the right to associate freely in political parties. This right shall include freedom to hold political opinions and to receive and impart information without interference by public authority and regardless of

[1] Guidelines on prohibition of political parties and analogous measures adopted by the Venice Commissions at its 41st Pleanary Session (Venice, 10-11 December 1999) Doc. CDL-INF (2000)1

[2] Doc. CDL (2001)8, adopted by the Venice Commission at its 46th Plenary meeting (Venice, 8-9 March 2001)

[3] Doc. CDL (2004)007, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004)

frontiers. The requirement to register political parties will not in itself be considered to be in violation of this right.

(ii) Any limitations to the exercise of the above-mentioned fundamental human rights through the activity of political parties shall be consistent with the relevant provisions of the European Convention for the Protection of Human Rights and other international treaties, in normal times as well as in cases of public emergencies.

(iii) Prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution.

(iv) A political party as a whole cannot be held responsible for the individual behaviour of its members not authorised by the party within the framework of political/public and party activities.

(v) The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger.

(vi) Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding or unconstitutionality and shall be deemed as of an exceptional nature and governed by the principle of proportionality. Any such measure must be based on sufficient evidence that the party itself and not only individual members pursue political objectives using or preparing to use unconstitutional means.

(vii) The prohibition or dissolution of a political party should be reserved to the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial.

In the light of the *Refah* decision, guideline (iii) may need to be revisited, since that case envisages circumstances where a party which seeks to overthrow fundamental democratic principles may be suppressed even though it does not use or advocate the use of violence. Guideline (iv) is interesting in the light of the use by the Court in *Refah* of evidence of unrepudiated speeches and activities by members. However, in *Refah* those members were very senior and their speeches and activities could be attributed to the party

> *"the statements and acts of Mr. Necmettin Erbakan, in his capacity as chairman of Refah or as the Prime Minister elected on account of his potion as the leader of his party, could incontestably be attributed to Refah. The role of chairman, who is*

frequently a party's emblematic figure, is different in that respect from that of a simple member." (§113)

"the speeches and stances of Refah's vice-chairmen could be treated in the same way as those of its chairman. … remarks by such persons on political questions are imputable to the party they represent." (§ 114)

"The Court considers that, inasmuch as the acts and remarks of the other Refah members who were MPs or held local government posts formed a whole which disclosed the party's aims and intentions and projected an image, when viewed in the aggregate, of the model of society it wished to set up, these could also be imputed to Refah. … Such acts and speeches were potentially more effective than abstract forms of words written in the party's constitution and programme in achieving unlawful ends. The Court considers that such acts and speeches are imputable to a party unless it distances itself from them.

But a short time later Refah presented those responsible for these acts and speeches as candidates for important posts, such as member of Parliament or mayor of a large city, and distributed one of the offending speeches to its local branches to serve as material for the political training of its members. Before the proceedings to dissolve Refah were instituted no disciplinary action was taken within the party against those who had made the speeches concerned on account of their activities or public statements and Refah never criticised their remarks." (§ 115)

The Venice Commission Guidelines on Legislation on Political Parties were adopted on 12-13 March 2004. The guidelines begin by defining a political party as "an association of person, one of the aims of which is to participate in the management of public affairs by the presentation of candidates to free and democratic elections".

The guidelines reiterate that registration as a necessary step for recognition of a political party is not *per se* a violation of Articles 11 and 10 but that the requirements for registration must be such as are "necessary in a democratic society" and proportionate. Registration procedures and minimum membership provisions should not apply to excessive requirements as to territorial representation or minimum membership (Guideline B)[4]. The non-democratic character of the party organisation should not in principle be a ground to refuse registration.

It may be noted that national courts in European states tend to be reluctant to intervene in the internal affairs of political parties. For example, the Albanian Constitutional Court has held that political parties are not subject to financial control by the State auditor over that part of their income deriving from donations. (ALB-2001-2-003 Codices 2004/3). In Poland, in a case where it was argued that the statutes of a political party were undemocratic because the president of the Party could appoint and remove presidents of the regions, the Constitutional Tribunal held that the Polish Constitution limited the possibilities and scale of intervention of the public authorities, including the legislator, in the internal structures and methods of activity of political parties (POL-2000-1-003).

Where a level of activity is required for a political party to maintain its status these should not be excessive but only what is "necessary in a democratic society" (Guideline C).

[4] For examples of requirements which the Venice Commission considered excessive see opinion (CDL-AD (2002) 28 endorsed on 18-19 October 2002, and Opinion CDL- AD (2003)8

The State authorities dealing with these issues should remain neutral and apply the principles of non-discrimination and equality of opportunity to participate in elections (Guideline D). Any interference with political party activities must be motivated and open to challenge in a court of law (Guideline E). Although such concern as the unity of the country can be taken into consideration, Member States should not impose restrictions which are not "necessary in a democratic society" on the establishment and activities of political unions and associations on regional and local levels. (Guideline F)

Where political parties lose that status (for example, due to non-participation or lack of success in elections) they must be allowed ton continue and to exist and act as ordinary associations. Finally foreign citizens and stateless persons should not be generally excluded, and should be able to participate in political life at least to the extent that they may participate in elections. They should be permitted to join political parties.

Conclusion

The jurisprudence under the European Convention on Human Rights has established clear provisions justifying the prohibition or suppression of political parties which use or advocate the use of violence. Insofar as that jurisprudence may also justify suppression of political parties which campaign against some tenet of the democratic order, even where they do so in a peaceful manner, the solution of the Strasbourg Court is more problematic. In the last analysis it is difficult to see how a democracy which is not based on the support, or at least the consent, of its population to live by democratic principles can survive as a democracy.