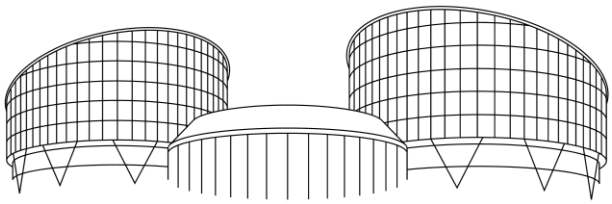

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HADEP AND DEMİR v. TURKEY

(Application no. 28003/03)

JUDGMENT

STRASBOURG

14 December 2010

FINAL

14/03/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of HADEP and Demir v. Turkey**,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos,
Guido Raimondi, *judges*,
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 23 November 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 28003/03) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish political party *Halkın Demokrasi Partisi* (People's Democracy Party, hereinafter referred to as "HADEP") and a Turkish national, Mr Ahmet Turan Demir ("the applicants"), on 1 September 2003.

2. The applicants were represented by Mr Bekir Kaya, Mr Fırat Aydınkaya, Mr Mahmut Şakar, Mr İrfan Dündar, Ms Aysel Tuğluk, Ms Hadice Korkut, Mr Doğan Erbaş, Mr Okan Yıldız, Mr Baran Doğan, Mr İbrahim Bilmez and Mr İnan Akmeşe, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, that the dissolution of HADEP by the Constitutional Court had been in breach of Article 11 of the Convention.

4. On 6 February 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. HADEP was a political party which had been established on 11 May 1994. At the time of its dissolution on 13 March 2003 its general secretary was the second applicant, Mr Ahmet Turan Demir, who had been elected to that post in February 2003.

6. In the general election held on 24 December 1995 HADEP received 1,171,623 votes, which represented 4.17% of the total number of votes cast. In the general election held on 18 April 1999 HADEP received 1,482,196 votes. However, as HADEP did not succeed in passing the required threshold of 10%, it was unable to be represented in the Grand National Assembly of Turkey following these two general elections (see *HADEP and Others v. Turkey* (dec.), no. 51292/99, 13 November 2008). In local elections held on 18 April 1999 HADEP won control of 37 municipalities. It had branches in 47 cities and in hundreds of districts. In 2002 HADEP became a member of the Socialist International.

7. The applicants submitted that, during a National Security Council (*Milli Güvenlik Kurulu*) meeting held on 18 December 1996, a decision had been taken to dissolve HADEP. In support of this assertion the applicants submitted to the Court a report which, they claimed, had been adopted by the National Security Council and which had subsequently been leaked to the press. The report, which is classified 'Secret', details a number of recommendations including "the control and pursuit of HADEP by the State in order to quell its activities". Following this decision HADEP branches had been raided and its administrators had been subjected to physical pressure. In support of this latter argument the applicants submitted to the Court two reports, detailing the physical attacks on and the killings and forced disappearances of dozens of HADEP members, some of which have been examined by the Court (see, *inter alia*, *Tanış and Others v. Turkey*, no. 65899/01, ECHR 2005–VIII).

8. On various dates criminal proceedings were brought against a number of members of HADEP who were holding executive positions within the party. Some of the proceedings were suspended while some ended in convictions. Some of them were convicted of spreading "separatist propaganda", in breach of section 8 of the Prevention of Terrorism Act, while others were convicted of "incitement to racial hatred and hostility in society on the basis of a distinction between social classes, races or religions", in breach of Article 312 of the Criminal Code. A number of others were convicted of lending assistance to the PKK[1] in breach of

1. Workers' Party of Kurdistan, an illegal organisation.

Article 169 of the Criminal Code, for making speeches, allowing hunger strikers to use HADEP premises and for possessing a number of documents prepared by PKK members in a law-firm owned by one of them[2]. Some served their prison sentences while execution of the sentences of a number of others was stayed.

9. On 29 January 1999 the chief prosecutor at the Court of Cassation brought proceedings before the Constitutional Court and demanded that HADEP be dissolved. The chief prosecutor argued that HADEP had become a "centre of illegal activities against the integrity of Turkey". In support of his allegations the chief prosecutor referred to the criminal proceedings pending against members of HADEP and a number of activities of its members. One incident relied on by the chief prosecutor was that during HADEP's annual general meeting in 1996 the Turkish flag had been taken down and replaced with a PKK flag.

10. On 25 February 1999 the chief prosecutor asked the Constitutional Court to render an interim decision banning HADEP from taking part in the forthcoming April general and local elections. The chief prosecutor's request was refused by the Constitutional Court on 8 March 1999.

11. On 5 April 1999 lawyers for HADEP submitted a written defence to the Constitutional Court. They alleged that the chief prosecutor's request for the dissolution of HADEP had been made as a result of the National Security Council's above-mentioned decision (see paragraph 7). They further argued, *inter alia*, that as it was not clear what the accusations against HADEP were, it was not possible for them to make full use of their defence rights. The lawyers relied on Articles 6, 9, 10, 11 and 14 of the Convention and Article 3 of Protocol No. 1 to the Convention, and asked the Constitutional Court to take into account the decisions and judgments of the European Court of Human Rights in cases concerning the dissolution of a number of other political parties in Turkey.

12. The chief prosecutor maintained in his written submissions of 9 April 1999 that HADEP had close ties with the PKK, and alleged that the former was being controlled by the latter. The chief prosecutor also repeated his request for HADEP to be dissolved before the elections which were to be held on 18 April 1999. This request was not accepted by the Constitutional Court.

13. During the proceedings, in their submissions to the Constitutional Court HADEP's representatives drew attention to the fact that the person who had taken down the flag was not a member of the party. They further stated that, immediately after the incident the HADEP congress had publicly condemned the incident. Since then HADEP had been dissociating itself

2. See following applications introduced by nine of those HADEP members concerning their convictions: *Kemal Bülbül v. Turkey*, no. 47297/99, 22 May 2007; *Odabaşı v. Turkey*, no. 41618/98, 10 November 2004; *Gülseren Öner and Others v. Turkey*, no. 64684/01, 1 June 2004.

from the incident and condemning it as an attack on a common symbolic value of the people of Turkey.

14. In its decision of 13 March 2003 the Constitutional Court decided unanimously to dissolve HADEP. The Constitutional Court based its decision on Articles 68 and 69 of the Constitution and sections 101 and 103 of the Political Parties Act (Law no. 2820). In arriving at its conclusion, the Constitutional Court took account of the activities of certain leaders and members of HADEP and concluded that HADEP had become a centre of illegal activities which included aiding and abetting the PKK.

15. The Constitutional Court noted, in particular, that during HADEP's annual general meeting in 1996 a non-HADEP member wearing a mask had taken down the Turkish flag and replaced it with a PKK flag and a poster of the then leader of the PKK, Abdullah Öcalan. During the same meeting slogans had also been chanted in support of the PKK and its leader[3]. The then general secretary of HADEP Mr Murat Bozlak, who was present during the meeting on that day, had done nothing to stop the Turkish flag being taken down and had stated during his speech that "the existence of the Kurds in Turkey, who were not allowed to speak their mother tongue, had been denied. The PKK, despite ongoing military operations, massacres and provocations, was holding its ceasefire. Nothing could be resolved with military operations or with occupation." The Constitutional Court considered the taking down of the Turkish flag as proof of the links between HADEP and the PKK. It further considered that the references made by Mr Bozlak to Turkey's fight against terrorism as an "occupation" and portraying Kurds as a separate nation showed that Mr Bozlak was supporting the PKK[4].

16. The Constitutional Court referred to Article 11 of the Convention in its judgment and stated that the rights guaranteed in that provision were not absolute and could be restricted in the circumstances listed in Article 11 § 2 of the Convention. It also referred to Article 17 of the Convention, and reached the following conclusion:

> "Carrying out activities, by relying on democratic rights and freedoms, against the indivisible unity of the State with its nation is unacceptable. In such circumstances it is the duty and *raison d'être* of the State to prevent the abuse of these rights and freedoms. Allowing a political party which supports terrorism and which is supported by terrorism to continue to exist cannot be contemplated.
>
> In statements and speeches made on behalf of the People's Democracy Party and in the course of various meetings, the party's general secretary Murat Bozlak, other party officials and chairmen and members of the party's provincial and district branches have stated that the Kurdish nation was a different nation from the Turkish nation; that the State of the Turkish Republic had been enforcing a policy of pressure and

3. For details of the incident, see *Akın v. Turkey* (friendly settlement), no. 34688/97, § 9, 12 April 2001.
4. *Bozlak and Others v. Turkey*, no. 34740/03, 13 January 2009.

oppression on the Kurdish nation; that there was an ongoing war between the PKK terrorist organisation and the State of the Republic of Turkey; and that the Kurdish nation should take sides with the PKK in this war. Some of these activities have resulted in convictions. These persons have thus aided and harboured the PKK and its leader Abdullah Öcalan, whose aim is to destroy the indivisible unity of the State. The incidents, which are detailed in relevant parts of this judgment and which took place during the Second Congress of the People's Democracy Party on 23 June 1996 in Ankara, as well as the objects and documents found in the party headquarters and in the party's various branches confirm the [above-mentioned conclusion].

Activities by members of the People's Democracy Party and the evidence [in our possession] clearly show the links between the respondent party and the PKK. The following incidents and activities – and many others and judgments rendered by courts – are proof of the connection and support between the People's Democracy Party and the PKK terrorist organisation:

– organisation of various activities – under instructions from the PKK – such as hunger strikes, demonstrations and issuing press releases with a view to protesting against the attempt to assassinate Öcalan and against the work that had been carried out by the State of the Turkish Republic to apprehend Öcalan, and against his subsequent arrest;

– work to create, by referring to concepts such as freedom, brotherhood and peace, a sense of a different nation among the people who live in a certain part of the country or who claim to belong to a certain ethnic group;

– description of the State's struggle against the PKK terrorist organisation as a 'dirty war', as well as taking sides with the PKK in this war by carrying out certain activities and by displaying certain behaviour;

– provision of training to a number of young people, in line with the PKK ideology but under the disguise of in-party training, with a view to recruiting them to the party first and subsequently to the PKK terrorist organisation in order for them to carry out activities on behalf of the PKK terrorist organisation and then sending them to the PKK's mountain camps as armed militants;

– the keeping in the Party's headquarters and in its district and provincial branches, of objects, books, banners and photographs of members of the PKK as well as other PKK terrorist organisation propaganda documents for which the courts have issued confiscation orders;

– the fact of allowing people to watch the organisation's media organ MED TV in these places for propaganda purposes; and

– speeches and activities during HADEP's Second Congress.

In the light of the above, and in accordance with Articles 68 and 69 of the Constitution and section 101 (b) of the Political Parties Act, it is hereby decided to dissolve HADEP, which has become a centre of illegal activities against the indivisible unity of the State with its nation and which has aided and harboured the PKK terrorist organisation.

..."

17. As an ancillary measure under Article 69 § 9 of the Constitution, the Constitutional Court banned 46 HADEP members and leaders from becoming founder members, ordinary members, leaders or auditors of any other political party for a period of five years[5]. The Constitutional Court also ordered the transfer of HADEP's property to the Treasury.

18. The decision of the Constitutional Court became final following its publication in the Official Gazette on 19 July 2003.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Domestic Law

19. Article 169 of the Criminal Code in force at the relevant time provided as follows:

> "Any person who, knowing that such an armed gang or organisation is illegal, assists it, harbours its members, provides it with food, weapons and ammunition or clothes or facilitates its operations in any manner whatsoever, shall be sentenced to not less than three and not more than five years' imprisonment ..."

20. Article 312 of the Criminal Code in force at the relevant time provided as follows:

> "Non-public incitement to commit an offence
>
> A person who expressly praises or condones an act punishable by law as an offence or incites the population to break the law shall, on conviction, be liable to between six months' and two years' imprisonment and a heavy fine of between six thousand and thirty thousand Turkish liras.
>
> A person who incites people to hatred or hostility on the basis of a distinction between social classes, races, religions, denominations or regions, shall, on conviction, be liable to between one and three years' imprisonment and a fine of between nine thousand and thirty-six thousand liras. If this incitement endangers public safety, the sentence shall be increased by one-third to one-half.
>
> The penalties to be imposed on those who have committed the offences defined in the previous paragraph shall be doubled when they have done so by the means listed in Article 311 § 2."

21. Section 8 of the Prevention of Terrorism Act provided, in so far as relevant, as follows:

> "Written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation are prohibited. Any person who engages in such an activity shall be

5. Applications lodged by a number of these HADEP members concerning the ban are pending before the Court under applications nos. 4517/04, 4527/04, 4985/04, 4999/04, 5115/04, 5333/04, 5340/04, 5343/04, 6434/04, 10467/04 and 43956/04.

sentenced to not less than one and not more than three years' imprisonment and a fine of between one hundred million and three hundred million Turkish liras. The penalty imposed on a reoffender may not be commuted to a fine."

22. Article 68 § 4 of the Constitution provides as follows:

"A political party's programme, statute or activities may not contradict the sovereignty of the State, the indivisible unity of the State with its nation, human rights, equality, principles of rule of law, sovereignty of the nation and democratic and secular principles of the Republic; they may not seek to establish a class-based dictatorship or any dictatorship and they may not incite people to commit offences."

23. The relevant paragraphs of Article 69 of the Constitution provide as follows:

"5. A decision to permanently dissolve a political party shall be taken if it is established that its statute and programme are not compatible with Article 68 § 4 of the Constitution;

6. A decision to permanently dissolve a political party on account of activities which are contrary to Article 68 § 4 of the Constitution can only be taken if the Constitutional Court decides that [the party] has become a centre where such activities are carried out. A political party shall be deemed to have become a centre of such activities if those activities are carried out in an intensive manner by its members and if this state of affairs is expressly or implicitly accepted by the party's congress, its decision-making bodies or its groups within Parliament, or if those activities are carried out directly by the party's organs in a decisive manner;

7. Depending on the severity of the actions in question, the Constitutional Court may, instead of dissolving the party, decide to fully or partly deprive it of the financial aid it receives from the State;

...

9. Founding members or ordinary members whose declarations or actions lead to the permanent dissolution of a political party shall be disqualified from acting as founders, ordinary members, administrators or auditors of another political party for a period of five years starting from the date of publication in the Official Gazette of the reasoned decision of the Constitutional Court;

..."

24. At the time of the dissolution of HADEP the relevant paragraph of Article 149 of the Constitution provided as follows:

"The Constitutional Court sits with its president and ten members, and adopts its decisions with a simple majority. Cases concerning the annulation of provisions of the Constitution or the dissolution of a political party require a three-fifth majority.

..."

On 7 May 2010 Article 149 of the Constitution was amended. The relevant paragraph now reads as follows:

"...When deciding to dissolve a political party or to deprive it of the financial aid it receives from the State, a two-third majority is required.

..."

25. Sections 101 and 103 of the Political Parties Act (Law no. 2820) provide as follows:

Section 101

"The Constitutional Court may decide to dissolve a political party:

(a) where [that party's] programme or statute contradicts the sovereignty of the State, the indivisible unity of the State with its nation, human rights, equality, principles of rule of law, sovereignty of the nation and democratic and secular principles of the Republic [and where they] defend and seek to establish a class-based dictatorship or any dictatorship [and where they] incite people to commit offences;

(b) where it is established by the Constitutional Court that [the] political party has become a centre of activities contrary to Article 68 § 4 of the Constitution; and

(c) where [the party] has received financial assistance from a foreign State, international organisation or from non-Turkish persons and companies.

In cases concerning (a) and (b) above and depending on the severity of the activities concerned, the Constitutional Court may, instead of dissolving the party, deprive it of half or more of the financial assistance provided by the Treasury for one year..."

Section 103

"The Constitutional Court shall have the power to determine whether a political party has become a centre of activities which are contrary to Article 68 § 4 of the Constitution.

A political party shall be deemed to have become a centre of such activities if those activities are carried out in an intensive manner by its members and if this state of affairs is expressly or implicitly accepted by the party's congress, its decision-making bodies or its groups within Parliament, or if those activities are carried out directly by the party's organs in a decisive manner."

B. International Documents

26. In its *Guidelines on the prohibition and dissolution of political parties and analogous methods* (published in January 2000) the European Commission for Democracy through Law (Venice Commission) proposed the following:

"1. 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 a public authority and

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

2. 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.

3. 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 undermining 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.

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

5. 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.

6. Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding of 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.

7. The prohibition or dissolution of a political party should be decided by the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial."

27. Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe on "Restrictions on political parties in the Council of Europe member states" states, in particular, as follows:

"...

10. ...[T]he Assembly believes that in exceptional cases, it may be legitimate for a party to be banned if its existence threatens the democratic order of the country.

11. In conclusion and in the light of the foregoing, the Assembly calls on the governments of member states to comply with the following principles:

i. political pluralism is one of the fundamental principles of every democratic regime;

ii. restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country;

iii. as far as possible, less radical measures than dissolution should be used;

iv. a party cannot be held responsible for the action taken by its members if such action is contrary to its statute or activities;

v. a political party should be banned or dissolved only as a last resort, in conformity with the constitutional order of the country, and in accordance with the procedures which provide all the necessary guarantees to a fair trial;

vi. the legal system in each member state should include specific provisions to ensure that measures restricting parties cannot be used in an arbitrary manner by the political authorities."

28. On 13-14 March 2009 the Venice Commission, acting on a request from the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) asking it "to review the constitutional and legal provisions which are relevant to the prohibition of political parties in Turkey", adopted the "Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey". The relevant parts of the Opinion are as follows:

"...

105. The Venice Commission concludes that, when compared to the common European practice, the situation in Turkey differs in three important respects:

1. There is a long list of substantive criteria applicable to the constitutionality of political parties, as laid down in Article 68 (4) and the Law on political parties, which go beyond the criteria recognised as legitimate by the ECtHR and the Venice Commission.

2. There is a procedure for initiating decisions on party prohibition or dissolution which makes this initiative more arbitrary and less subject to democratic control, than in other European countries.

3. There is a tradition for regularly applying the rules on party closure to an extent that has no parallel in any other European country, and which demonstrates that this is not in effect regarded as an extraordinary measure, but as a structural and operative part of the constitution.

106. In conclusion, the Venice Commission is of the opinion that the provisions in Article 68 and 69 of the Constitution and the relevant provisions of the Law on political parties together form a system which as a whole is incompatible with Article 11 of the ECHR as interpreted by the ECtHR and the criteria adopted in 1999 by the Venice Commission and since endorsed by the Parliamentary Assembly of the Council of Europe.

107. The basic problem with the present Turkish rules on party closure is that the general threshold is too low, both for initiating procedures for and for prohibiting or dissolving parties. This is in itself *in abstracto* deviating from common European democratic standards, and it leads too easily to action that will be in breach of the ECHR, as demonstrated in the many Turkish cases before the European Court of Human Rights.

108. Because the substantial and procedural threshold for applying the Turkish rules on party prohibition or dissolution is so low, what should be an exceptional measure functions in fact as a regular one. This reduces the arena for democratic politics and widens the scope for constitutional adjudication on political issues. The scope of democratic politics is further eroded by the constitutional shielding of the first three articles of the Constitution, in such a way as to prevent the emergence of political programmes that question the principles laid down at the origin of the Turkish Republic, even if done in a peaceful and democratic manner.

109. The Venice Commission is of the opinion that within democratic Europe these strict limitations on the legitimate arena for democratic politics are particular to the Turkish constitutional system, and difficult to reconcile with basic European traditions for constitutional democracy.

110. The Venice Commission recognises and welcomes the fact that in recent years the rules on party prohibition in Turkey have been changed in such a way as to raise the threshold for dissolution. In the 2001 reform, Article 69 was amended to include the qualification that for a party to be in conflict with the criteria of Article 68 (4) the party must be a 'centre' for such activities. At the same time, the requirement of a 3/5 majority of the Constitutional Court for dissolving a political party was introduced into Article 149. This has shown itself to be an important reform, which was decisive for the outcome of the AK party case. While laudable, these reforms have not been sufficient to fully bridge the gap between the Turkish rules and the standards of the ECHR and the Venice Commission Guidelines.

111. Consequently, the Venice Commission is of the opinion that, although the 2001 revision was an important step in the right direction, it is still not sufficient to raise the general level of party protection in Turkey to that of the ECHR and the European common democratic standards. Further reform is necessary in order to achieve this, both on the substantive and the procedural side.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

29. The applicants complained that the dissolution of HADEP had violated their right to freedom of association as guaranteed by Article 11 of the Convention, which reads 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."

30. The Government contested that argument.

A. Admissibility

31. The Government argued that the second applicant Mr Ahmet Demir could not claim to be a victim within the meaning of Article 34 of the Convention as he had only been elected as HADEP's general secretary a short time before HADEP's dissolution. Furthermore, unlike some other executive members of HADEP, no ban had been imposed on him by the Constitutional Court.

32. The applicants responded by arguing that, as general secretary of HADEP, Mr Demir had been directly affected by the decision to dissolve the party. Dissolution of HADEP had not only deprived him of his position as the leader of the party, but he had also been prevented from taking an active part in politics representing his party.

33. The Court observes that the second applicant Mr Ahmet Demir was elected as HADEP's general secretary in February 2003, that is before the Constitutional Court decided to dissolve HADEP on 13 March 2003 and thus while HADEP continued to exist as a political party. This fact is not disputed by the respondent Government. Nor did the respondent Government seek to argue that Mr Demir's election to that post had been unlawful or in breach of applicable rules and regulations.

34. Moreover, the Court considers that the fact that no ban had been imposed on Mr Demir by the Constitutional Court under Article 69 § 9 of the Constitution has no bearing on his victim status since his complaint under Article 11 of the Convention relates solely to the dissolution of HADEP.

35. It follows, therefore, that Mr Demir was the general secretary of HADEP at the time of its dissolution and can thus claim to be a victim within the meaning of Article 34 of the Convention.

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an interference

37. The parties accepted that HADEP's dissolution and the measures which accompanied it amounted to an interference with the applicants' exercise of their right to freedom of association. The Court takes the same view.

2. Whether the interference was justified

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

(a) "Prescribed by law"

(i) The applicants

39. The applicants considered that HADEP had effectively been dissolved by the decision adopted by the National Security Council on 18 December 1996 (see paragraph 7 above) and that the subsequent proceedings before the Constitutional Court had merely been attempts to legalise that dissolution.

(ii) The Government

40. The Government submitted that the interference was "prescribed by law" as the measures ordered by the Constitutional Court were based on Articles 68 and 69 of the Constitution, as well as sections 101 and 103 of the Political Parties Act (Law no. 2820).

(iii) The Court's assessment

41. The Court observes that the dissolution was based on the above-mentioned Articles of the Constitution and the Political Parties Act and was thus prescribed by law.

(b) "Legitimate aim"

42. The applicants pointed to the fact that the chief prosecutor at the Court of Cassation had argued that HADEP had become a "centre of illegal activities against the integrity of Turkey". Furthermore, the Constitutional Court had decided to dissolve HADEP because it had become "a centre of illegal activities against the indivisible unity of the State with its nation". The applicants denied that they had ever been a threat to Turkish society

and argued that the dissolution of HADEP had thus been devoid of any legitimate aim.

43. The Government maintained that the dissolution of HADEP had pursued the legitimate aims of preventing disorder, protecting the rights of others and protecting territorial integrity and thus preserving national security.

44. The Court observes that the Constitutional Court decided to dissolve HADEP because it was deemed to be a centre of illegal activities against the indivisible unity of the State with its nation (see paragraph 16 above). Contrary to what was submitted by the Government, however, the Court has hesitations as to whether the dissolution of a political party in order to maintain the indivisible unity of the State with its nation can be said to have pursued the legitimate aims of preventing disorder, protecting the rights of others and protecting territorial integrity and thus preserving national security. Nevertheless, the Court considers that this question is closely related to the examination of the necessity of the interference.

(c) "Necessary in a democratic society"

(i) The applicants

45. The applicants argued that dissolving a political party did not comply with the needs of a democratic society and made it impossible to achieve pluralism. The dissolution of HADEP was not necessary in a democratic society. In support of their submissions the applicants referred to the previous political party dissolution cases decided by the Court, as well as the guidelines proposed by the Venice Commission (see paragraph 26 above).

46. The applicants further submitted that, contrary to what was suggested by the Government, HADEP had never done anything to damage the indivisible unity of Turkey or harboured that aim. What it had sought to achieve in particular was to ensure that citizens of Kurdish origin had the rights to be educated in their mother tongue, to listen to radio and watch television programmes in the Kurdish language, to sustain their culture and to exercise their democratic right to participate in the political arena. Furthermore, HADEP had always advocated democracy as well as equality between people. By doing so it had never posed a danger to national security. Nevertheless, the cliché "indivisible unity of the State with its nation" had always been used as a legal obstacle to curtail the above-mentioned democratic rights.

47. They stated that HADEP had been the only political party in Turkey to advocate a democratic solution to the Kurdish problem. It had called upon the State to bring the decades-old fight in the south-east of the country to an end and make peace with the Kurds. Indeed, HADEP's official programme itself had advocated a solution to the Kurdish problem by

adhering to democratic standards. In support of this submission the applicants submitted to the Court the following summary of HADEP's official party programme:

> "HADEP was established with a view to forming a democratic government to solve the problems in the country...Its objective is to develop democracy with all its rules and bodies, to defend the rights of the peoples of Turkey regardless of their ethnic origins, and to increase their prosperity...HADEP is a candidate for political power in order to achieve these ideals and its other policies...The current system, which offers nothing other than oppression, prohibition and injustice to workers, civil servants, peasants, intellectuals, young people and women, must be changed. The key to this [change] is democracy. HADEP is a candidate to achieve that change...
>
> The development of democracy and peace in Turkey depends firstly on a solution to the Kurdish problem. Contemporary, democratic and participative avenues for solutions which are based on [respect for] human rights will be found in order to clear the obstacles which block change. It is impossible to suppress this problem with solutions based on violence. The policy of resorting to violence wastes national resources and prevents economic and sociological development. In order to open avenues for a peaceful solution to this problem, the State must at once renounce its policy of suppressing the problem by violent methods. An atmosphere in which opinions about possible solutions for the Kurdish problem can be openly voiced must be created. [HADEP] will bring about a solution to the Kurdish problem and will thus bring the inequality to an end. [That solution] will be modern, fair, compatible with the principles of international law, and based on equality. Bringing about a fair solution to the Kurdish problem through peaceful, equitable and democratic methods is among HADEP's main aims...
>
> HADEP will be striving to ensure disarmament and peace in the international arena, to take collective steps in order to find fair solutions to the regional problems, to establish [respect for] human rights and democracy, to create efficient forums in order to achieve collaboration against militarism, fascism and racism. HADEP will be working to establish peace and security in our region and in the world. A lasting peace can only be achieved when democracy establishes its roots."

48. The applicants maintained that the Constitutional Court had based its decision on a number of speeches and activities that had allegedly been made or carried out by members of HADEP. They pointed out that in respect of some of these speeches and activities a number of HADEP members had been tried but acquitted. Nevertheless, this had not prevented the Constitutional Court from relying on them in dissolving HADEP. Moreover, some of the activities and statements relied on by the Constitutional Court had been those of persons who were not members of HADEP.

49. Finally, the applicants argued that most of the impugned activities and statements which the Constitutional Court attributed to HADEP members had remained within the permissible limits of the freedom of speech and association.

(ii) The Government

50. The Government submitted that no political party should be allowed to participate in activities whose aim was to destroy the unity and integrity of a State or to disturb national solidarity. Such activities were unlawful under both national legislations and international conventions.

51. The actions of members of HADEP, as well as the activities of HADEP as a political party, which were set out in the decision of the Constitutional Court, revealed a connection between HADEP and the PKK. It was thus accepted that both HADEP and its members were representatives of the terrorist organisation. Such activities could not be regarded as activities in the context of freedom of assembly and association within the meaning of the Convention.

52. In the Government's opinion the present application differed from the previous cases concerning the dissolution of political parties in Turkey which had been examined by the Court. Those political parties had been dissolved on the basis of their party programmes. HADEP, on the other hand, had been dissolved on the basis of activities carried out by its members. Such activities showed that HADEP had not been bound by the rules of democratic debate, but had instead tended towards the aim of dividing the country by applauding the terrorist acts perpetrated by the PKK.

53. The Government submitted that the PKK was a terrorist organisation. In this connection they referred, *inter alia*, to the "strong condemnation" by the Parliamentary Assembly of the Council of Europe in its recommendation no. 1377 of 25 June 1998 of "the violence and terrorism perpetrated by the Kurdistan Workers' Party (PKK), which has contributed to population displacement and movements". They also pointed to the fact that the PKK was regarded as a terrorist organisation by the European Union (see 2002/976/CFSP; Council Common Position of 12 December 2002 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2002/340/CFSP).

54. Regard being had to the difficulties in fighting terrorism, it was justified on the basis of the evidence relied on by the Constitutional Court that HADEP bore some responsibility for the problems caused by terrorism in Turkey. Thus, HADEP's dissolution had not been a disproportionate measure and it had not amounted to a violation of Article 11 of the Convention. In support of their arguments the Government referred to the Court's case-law and submitted that a political party could 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 had to be legal and democratic; secondly, the change proposed had itself to be compatible with fundamental democratic principles. It necessarily followed that a political party whose leaders incited violence or put forward a policy which failed to

respect democracy or which was aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy could not lay claim to the Convention's protection against penalties imposed on those grounds (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 98, ECHR 2003-II).

55. The Government stated that, pursuant to an amendment made to Article 69 § 7 of the Constitution in 2001, depending on the severity of the actions in question the Constitutional Court could, instead of dissolving the party, decide to fully or partly deprive it of the financial aid it received from the State. In the present case, having regard to the gravity of the actions of HADEP and its members, the Constitutional Court had decided on the dissolution without mentioning in its decision the alternative of the penalty of deprivation of State aid. In any event, on the grounds of its votes and the number of its general representatives, HADEP had not been among the political parties receiving State aid. Thus the alternative mentioned above was not actually applicable in the instant case.

(iii) The Court's assessment

56. The Court reiterates that notwithstanding its autonomous role and particular sphere of application, Article 11 of the Convention must also be considered in the light of Article 10 of the Convention. 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 of the Convention. 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.

57. As the Court has said many times, there can be no democracy without pluralism. It is for that reason that freedom of expression as enshrined in Article 10 of the Convention 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 v. Turkey*, 30 January 1998, §§ 42-43, *Reports of Judgments and Decisions* 1998-I).

58. When the Court 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 of the Convention the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it

was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 of the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (*ibid*., § 47).

59. Furthermore, the exceptions set out in Article 11 of the Convention 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 of the Convention 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 (*ibid*., § 46).

60. The Court has also defined as follows the limits within which political groups can continue to enjoy the protection of the Convention while conducting their activities (*ibid*., § 57):

> "... 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."

61. On that point, and as the Government pointed out in their observations (see paragraph 54 above), the Court considers that a political party may campaign for 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 in every respect be legal and democratic, and 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 does not comply with one or more of the rules of 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 (see, *mutatis mutandis*, *Socialist Party and Others v. Turkey*, 25 May 1998, §§ 46-47, *Reports* 1998-III).

62. Nor can it be ruled out that the programme of a political party or the statements of its leaders may conceal objectives and intentions different from those they proclaim. To verify that they do not, the content of the programme or statements must be compared with the actions of the party and its leaders and the positions they defend taken as a whole (*Yazar and Others (HEP) v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 50, ECHR 2002-II and the cases cited therein).

63. The Court has already examined a number of applications concerning permanent dissolutions of political parties in Turkey (see, in chronological order, *United Communist Party of Turkey and Others*, cited above; *Socialist Party and Others*, cited above; *Freedom and Democracy Party (ÖZDEP) v. Turkey*, no. 23885/94, ECHR 1999-VIII; *Yazar and Others (HEP)*, cited above; *Dicle for the Democratic Party (DEP) v. Turkey*, no. 5141/94, 10 December 2002; *Refah Partisi (the Welfare Party) and Others* [GC], cited above; *Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95, 12 November 2003; *Democracy and Change Party and Others v. Turkey*, nos. 39210/98 and 39974/98, 26 April 2005; *Emek Partisi and Şenol v. Turkey*, no. 39434/98, 31 May 2005, and *Demokratik Kitle Partisi and Elçi v. Turkey*, no. 51290/99, 3 May 2007).

64. As in the above-mentioned cases, the interference in issue in the present case was also radical: HADEP was definitively dissolved with immediate effect, its assets were liquidated and transferred *ipso jure* to the Treasury and its leaders were banned from carrying on certain similar political activities.

65. The Court must now determine whether, in the light of the above principles and considerations, HADEP'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".

66. The Court observes at the outset that HADEP was dissolved on the basis of activities and statements of some of its members which, according to the Constitutional Court, rendered HADEP "a centre", within the meaning of Article 69 § 6 of the Constitution, of illegal activities. It further observes that, as pointed out by the applicants, the Constitutional Court also took into account the actions and statements of non-HADEP members.

67. It was not argued by the chief prosecutor, nor was it considered by the Constitutional Court of its own motion, that HADEP's party programme itself was incompatible with Article 68 § 4 of the Constitution.

68. In any event, the Court notes that HADEP's party programme – of which a summary provided by the applicants is set out above in paragraph 47 – condemned violence and proposed political solutions which were democratic and compatible with the rule of law and respect for human rights. It is regrettable that no weight was accorded in the Constitutional Court's decision to HADEP's stated peaceful aims set out in its programme. In this connection the Court refers to the stance taken by the Parliamentary Assembly in its resolution of 2002, namely that a political party cannot be held responsible for the action taken by its members if such action is contrary to its statute or activities (see paragraph 27 above).

69. The Court will thus consider whether the conclusion reached by the Constitutional Court, namely that HADEP had become a centre of illegal activities which included aiding and abetting the PKK on account of its

members' activities and statements, may be considered to have been based on an acceptable assessment of the relevant facts (see *Yazar and Others (HEP)*, cited above, § 55).

70. The Court notes that in its decision the Constitutional Court referred to a large number of statements made by various HADEP members, in which the actions of the security forces of Turkey in south-east Turkey in their fight against terrorism was defined and referred to as a "dirty war". The same phrase was also referred to by the Constitutional Court in its reasoning (see paragraph 16 above). The Court has already had occasion to examine articles and speeches featuring the phrase "dirty war" in a number of its judgments (see, in particular, *Birdal v. Turkey*, no. 53047/99, §§ 6 and 37, 2 October 2007; *Ulusoy v. Turkey*, no. 52709/99, §§ 13, 16 and 47, 31 July 2007; and *Şener v. Turkey*, no. 26680/95, §§ 44-45, 18 July 2000), and considered them to be a sharp criticism of the Government's policy and of the actions of their security forces. It held that they did not incite people to hatred, revenge, recrimination or armed resistance. The Court adopts the same view in the present case. None of the statements made by HADEP members which contained the phrase "dirty war" encouraged violence, armed resistance or insurrection. Consequently, the severe, hostile criticisms made by those HADEP members about certain actions of the armed forces in their anti-terrorist campaign cannot in themselves constitute sufficient evidence to equate HADEP with armed groups carrying out acts of violence (see, *mutatis mutandis*, *Yazar and Others (HEP)*, cited above, § 59).

71. The Constitutional Court also noted that persons visiting HADEP premises had been allowed to watch MED TV, a private television channel. According to the Constitutional Court, this was one of the grounds which proved the existence of a connection between HADEP and the PKK.

72. Once again, the issue of MED TV was also examined by the Court in its previous judgments. For example, in its judgment in the case of *Albayrak v. Turkey* (no. 38406/97, § 47, ECHR 2008-...), which concerned an applicant who watched MED TV, the Court reiterated that freedom of expression required that care be taken to dissociate the personal views of a person from received information that others wished or might be willing to impart to him or her (see also *Korkmaz v. Turkey (no. 1)*, no. 40987/98, §§ 10, 26 and 28, 20 December 2005). The Court considers that, as was the case in the two judgments referred to above, no such care appears to have been taken by the Constitutional Court in the present case.

73. Another argument advanced by both the chief prosecutor and the Constitutional Court in support of HADEP's dissolution was that during HADEP's annual general meeting the Turkish flag had been taken down by a non-HADEP member and replaced with a PKK flag and a poster of the leader of the PKK, Abdullah Öcalan (see paragraphs 9, 13 and 15 above). The then general secretary of HADEP Mr Murat Bozlak, who was present

during the meeting on that day, had done nothing to stop the Turkish flag being taken down.

74. The Court notes at the outset that the person who took down the Turkish flag and replaced it with a PKK flag was not, as established by the Constitutional Court, a member of HADEP. Nevertheless, the incident was relied on very heavily by the Constitutional Court in concluding that it had been proof of the links between the PKK and HADEP, notwithstanding the clear wording of Article 69 § 6 of the Constitution which provides that "a political party shall be deemed to have become a centre of such activities if those activities are carried out in an intensive manner *by its members*" (emphasis added; see paragraph 23 above). It does not appear that the HADEP representatives' submissions to the Constitutional Court, in which they drew that court's attention to the fact that the person in question was not a HADEP member and that they have condemned the incident, were taken into account by the Constitutional Court.

75. In a similar vein, the Court observes that, when the Constitutional Court adopted its decision, criminal proceedings brought against a number of HADEP members for a number of activities had already been suspended (see paragraph 8 above). Thus, although no criminal liability was placed on those members by the national courts for the actions in question and even though it was not even established whether or not such activities had actually been carried out, the Constitutional Court relied on the allegations when concluding that through those actions the HADEP members in question had rendered HADEP a centre of illegal activities. The Court observes that such an establishment of facts or guilt is not required by the Constitution in political party dissolution cases. Nevertheless, in the opinion of the Court, the absence of such a requirement rendered the threshold used by the Constitutional Court on dissolving HADEP too low (see, in this connection, paragraph 107 of the Venice Commission's opinion in paragraph 28 above).

76. In this connection the Court also observes that, pursuant to an amendment made to Article 69 § 7 of the Constitution in 2001 the Constitutional Court may, instead of dissolving a political party, decide to fully or partly deprive it of the financial aid it received from the State. However, this alternative and less drastic measure was not considered by the Constitutional Court in the present case because, on the grounds of its votes and the number of its general representatives, HADEP had not been among the political parties receiving State aid.

77. In its decision the Constitutional Court also noted that certain HADEP members had considered the Kurdish nation as a different nation from the Turkish nation. It also considered that, "work to create, by referring to concepts such as freedom, brotherhood and peace, a sense of a different nation among the people who live in a certain part of the country"

was proof of the connection and support between HADEP and the PKK (see paragraph 16 above).

78. The Court perceives no convincing basis for this assertion. It considers that such speeches must be read in conjunction with HADEP's stated aims as set out in its programme. It is stated therein, in particular, that HADEP had been established with a view to forming a democratic government to solve the problems in the country. Its objective was to develop democracy with all its rules and bodies, to defend the rights of the peoples of Turkey regardless of their ethnic origins, and to increase their prosperity (see paragraph 47 above). The Court thus considers that, taken together, the statements in issue present a political project whose aim is in essence the establishment – in accordance with democratic rules – of "a social order encompassing the Turkish and Kurdish peoples" (see, *mutatis mutandis*, *Freedom and Democracy Party* (*ÖZDEP*), cited above, § 41).

79. Furthermore, even assuming that by such statements HADEP advocated the right to self-determination, that would not in itself be contrary to the fundamental principles of democracy. If merely by advocating such ideals a political group were held to be supporting acts of terrorism, that would imperil the possibility of dealing with related issues in the context of a democratic debate and would allow armed movements to monopolise support for the principles in question. That in turn would be strongly at variance with the spirit of Article 11 of the Convention and the democratic principles on which it is based (see *Yazar and Others (HEP)*, cited above, § 57).

80. Finally, the Court notes the Constitutional Court's statement that "[a]llowing a political party which supports terrorism and which is supported by terrorism to continue to exist cannot be contemplated" (see paragraph 16 above). Indeed, as put forward by the Venice Commission, prohibition or dissolution of political parties which advocate the use of violence or which use violence as a political means to overthrow the democratic constitutional order, may be justified (see paragraph 26 above). Furthermore, the Court reiterates the conclusion reached in its judgment in the case of *Herri Batasuna and Batasuna v. Spain* that links between a political party and a terrorist organisation could objectively be considered as a threat for democracy (nos. 25803/04 and 25817/04, §§ 85-91, ECHR 2009-...). Nevertheless, having examined all the material submitted to it in the present case, it does not consider that the activities and statements referred to in the Constitutional Court's decision demonstrate that HADEP had associated itself with the terrorist actions of the PKK or had encouraged them in any way.

81. In the light of the foregoing, the Court considers that HADEP's dissolution cannot reasonably be said to have met a "pressing social need".

82. Reiterating that the dissolution of a political party is a "drastic" measure (see *United Communist Party of Turkey and Others*, §§ 54 and 61,

and *Socialist Party and Others*, § 51, both cited above), the Court considers that in the instant case such interference with the applicants' freedom of association was not necessary in a democratic society.

Accordingly, the Court finds that the dissolution of HADEP breached Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

83. Relying on Article 6 of the Convention, the applicants argued that the decision of the National Security Council had influenced the judges of the Constitutional Court in reaching their decision to dissolve HADEP. They further argued that, while the Constitutional Court was examining the case, the President of the Republic, the Prime Minister, various Government officials and high-ranking military officers had put systematic pressure on the Constitutional Court by making various statements to the effect that HADEP was a threat to the official ideology of the State. The applicants complained that these factors damaged the Constitutional Court's independence and impartiality, contrary to Article 6 of the Convention.

84. Relying on Article 6 § 2 of the Convention, the applicants submitted that the National Security Council, the Government and the press had declared HADEP guilty even before the Constitutional Court had rendered its decision.

85. Under Article 6 § 3 (b) and (d) of the Convention the applicants complained that the Constitutional Court had not ensured that they and their witnesses could attend the proceedings and had failed to hold a hearing.

86. The Government argued that Article 6 of the Convention was not applicable to the proceedings concerning the dissolution of HADEP.

87. The Court observes that in a number of cases which concerned dissolutions of political parties in Turkey, complaints under Article 6 of the Convention concerning alleged shortcomings in the proceedings before the Constitutional Court were rejected as being incompatible *ratione materiae* with Article 6 of the Convention on the ground that the right in question was a political right *par excellence* (see, *inter alia*, *Yazar and Others (HEP)*, cited above, §§ 66-67, ECHR 2002-II; and *The Welfare Party and Others v. Turkey* (dec.), nos. 41340/98, 41342/98, 41343/98, 41344/98, 3 October 2000). It sees no reason to come to a different conclusion and concludes that Article 6 of the Convention is not applicable in the instant case. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention, and must be rejected in accordance with Article 35 § 4 of the Convention.

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

88. The applicants complained that the dissolution of HADEP had violated their rights guaranteed by Articles 9 and 10 of the Convention. Relying on Article 14 of the Convention in conjunction with the above Articles, the applicants alleged that HADEP had been dissolved because it was regarded as a Kurdish party, as the great majority of its supporters were Kurds.

89. The Court considers that these complaints may be declared admissible. However, since they relate to the same matters as those considered above under Article 11 of the Convention, the Court does not consider it necessary to examine them separately (see *Freedom and Democracy Party* (*ÖZDEP*), cited above, § 49).

IV. ALLEGED VIOLATIONS OF ARTICLES 1 AND 3 OF PROTOCOL No. 1 TO THE CONVENTION

90. The applicants also complained that the transfer of HADEP's possessions to the Treasury had been in violation of Article 1 of Protocol No. 1 to the Convention.

91. Finally, the applicants alleged a breach of Article 3 of Protocol No. 1 in that HADEP's dissolution had prevented it from representing its millions of voters.

92. The Court notes that these complaints may also be declared admissible. Nevertheless, since the measures complained of by the applicants were only secondary effects of HADEP's dissolution which the Court has found to be in breach of Article 11 of the Convention, it considers that there is no cause to examine them separately (see *Refah Partisi (the Welfare Party) and Others* [GC], cited above, § 139).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

94. The applicants claimed 17,610,000 euros (EUR) in respect of pecuniary damage. EUR 500,000 of this sum was claimed by Mr Ahmet

Turan Demir, the second applicant, who alleged that as a result of the dissolution of his party he had become unable to become a member of parliament. The remaining sum of EUR 17,110,000 was claimed in respect of, *inter alia*, the State aid given to the 37 HADEP municipalities and other voluntary contributions made to the party by its supporters.

95. The applicants also claimed the sum of EUR 11,000,000 in respect of non-pecuniary damage. EUR 1,000,000 of this sum was claimed by the second applicant in his own name.

96. The Government considered the claim to be unsupported by adequate documentary evidence. They also argued that there was no causal connection between the claim and the alleged violations of the Convention.

97. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the second applicant Mr Ahmet Turan Demir EUR 24,000 in respect of non-pecuniary damage, to be held by him for the members and leaders of HADEP.

B. Costs and expenses

98. The applicants also claimed EUR 33,000 for the costs and expenses incurred before the Constitutional Court, and EUR 71,200 for those incurred before the Court. These sums included a total of EUR 99,000 for the fees of 16 lawyers in respect of which the applicants referred to the Ankara and Istanbul Bar Associations' recommended fee scales. The remaining sum of EUR 5,400 was claimed in respect of computers and printers purchased for the lawyers, as well as various expenses such as translation, postal, stationery and telephone. The applicants submitted to the Court a bill for approximately EUR 2,200 from a translation agency.

99. The Government argued that the claims for costs and expenses were not substantiated by documentary evidence, and invited the Court not to rely on the tariffs issued by bar associations.

100. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicants have not proved that they have actually incurred all of the costs claimed. In particular, in support of their claim for their lawyers' fees, they failed to submit documentary evidence, such as a contract, a fee agreement or a breakdown of the hours spent by their lawyers on the case. Accordingly, the Court makes no award in respect of their lawyers' fees.

101. Concerning the claim in respect of the remaining costs and expenses, the Court considers that only the claim in respect of the translation costs was supported by evidence (see paragraph 98 above). It

therefore awards the applicants, jointly, the sum of EUR 2,200 that was claimed in respect of translation costs.

C. Default interest

102. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 of the Convention inadmissible and the remaining complaints admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that there is no need to examine the complaints under Articles 9, 10 and 14 of the Convention or the complaints under Articles 1 and 3 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the second applicant Mr Ahmet Turan Demir, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 24,000 (twenty-four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be held by him for members and leaders of HADEP. It also awards the applicants jointly EUR 2,200 (two thousand two hundred euros), plus any tax that may be charged to them, in respect of costs and expenses, to be converted into Turkish liras at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President