THE CONSTITUTIONAL COURT OF

THE REPUBLIC OF TURKEY

Case No: 2021/2

The Chief Public Prosecutor of the Court of Cassation

v.

The Peoples' Democratic Party (HDP)

INTERVENTION

by

ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19)

ASSOCIATION OF LAWYERS FOR LIBERTY (ÖHD)

EUROPEAN ASSOCIATION OF LAWYERS FOR DEMOCRACY AND HUMAN RIGHTS (ELDH)

EUROPEAN DEMOCRATIC LAWYERS (AED)

HUMAN RIGHTS ASSOCIATION (İHD)

HUMAN RIGHTS WATCH (HRW)

THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)

INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH)

RIGHTS INITIATIVE ASSOCIATION

TURKEY HUMAN RIGHTS LITIGATION SUPPORT PROJECT (TLSP)

I. Summary

1. The lawsuit filed against the Peoples' Democratic Party (HDP) for its dissolution pursuant to Article 69(6) of the Constitution and Articles 101(1)(b) and 103 of Law No. 2820 on Political Parties (the Law on Political Parties) raises serious questions under international human rights law.

2. The submission of ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), the Association of Lawyers for Liberty (ÖHD), European Association of Lawyers for Democracy and Human Rights (ELDH), European Democratic Lawyers (AED), Human Rights Association (İHD), Human Rights Watch (HRW), the International Commission of Jurists (ICJ), International Federation for Human Rights (FIDH), Rights Initiative Association, and the Turkey Human Rights Litigation Support Project (TLSP) (collectively NGOs) provides an analysis of the question of compatibility of a potential dissolution of the HDP with international and European human rights standards relevant to the restrictions on the political parties, in particular dissolution of those parties. It draws on the authors' extensive collective experience and expertise in international human rights law, constitutional law, criminal law and litigation before the European Court of Human Rights and other international mechanisms.

3. Firstly, the NGOs submit that the rights of the political parties are protected based on several rights guaranteed under international human rights law (in particular right to freedom of association, freedom of expression, freedom of peaceful assembly, the rights of every citizen to take part in the conduct of public affairs, and the right to vote and to be elected) and the restrictions or dissolution of political parties should be regarded as exceptional measures. Accordingly, the dissolution of political parties by the independent and impartial judicial authorities must be narrowly tailored and should be applied only in exceptional cases; namely only if it is necessary in a democratic society and if there is concrete evidence that a party is engaged in activities threatening democracy and fundamental freedoms**.** Such a high level of protection is crucial, given the fundamental role of political parties in the democratic process. In this connection, a general comparative overview of national regulations on political parties' dissolution of Member States of Council of Europe and their relevant practices also show how party dissolutions are considered as exceptional and extreme measures in democratic societies. Yet, the practice in Turkey stands in sharp contrast to this practice.

4. Secondly, the NGOs submit that, in general, Turkish authorities practice concerning political party dissolutions has not been in line with the standards the European Court of Human Rights (ECtHR) has developed in its application of Article 11 of the European Convention on Human Rights (the Convention or ECHR) guaranteeing the right to freedom of association -in light of Article 10 on the right to freedom of expression- to the dissolution cases. The main issues in this regard are as follows:

- The domestic rules as a whole do not seem to afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention.
- The ECtHR has repeatedly held that advocating right to self-determination and recognition of Kurdish language rights or Kurdish identity were not themselves contrary to the fundamental principles of democracy and found violation of Article

11 of the Convention in all of the cases concerning pro-Kurdish political parties, mostly on the ground that the dissolutions of those parties could not reasonably be said to have met "a pressing social need".

- The Constitutional Court has a tendency to impose the most severe of the measures laid down by the Constitution, rather than considering less drastic measures when strict legal conditions are met.

5. Thirdly, the NGOs submit that the ECtHR's, other international bodies' and NGOs' findings in respect of Turkey are relevant for an examination of Article 18 of the Convention. The ECtHR's recent findings in the cases concerning HDP members, the Government's systemic interference with the judiciary, and the ongoing practice of using criminal law as a tool to silence critical voices suggest a risk that the State is using political party dissolution to stifle pluralism and to limit freedom of political debate, which is at the very core of the concept of a democratic society.

6. Lastly, the NGOs underline that the ECtHR has delivered important rulings in the recent years that are directly or indirectly relevant to the lawsuit brought against HDP before the Constitutional Court. The first group of these rulings concerns the lifting of immunities of the HDP MPs, including the pre-trial detention and criminal prosecution of the former co-chair of the political party, Selahattin Demirtaş, and a number of other prominent politicians. The second relevant group of judgments pending for implementation by Turkey concerns the broadly formulated criminal law, in particular Anti-Terrorism Law, and the expansive interpretation of it to punish a broad array of legitimate activities, including the expression of political dissent. Third group of cases concerns unjustified and disproportionate interferences with freedom of expression on account of criminal proceedings initiated against applicants under various articles of the Criminal Code or Anti-Terrorism Law. The NGOs submit that the findings of the ECtHR that are relevant to the case before the Constitutional Court must form the basis for the Constitutional Court's decision in recognition of its role in ensuring Turkey's compliance with its obligation to implement the ECtHR judgments.

II. Introduction

7. The case before the Constitutional Court of Turkey concerns the lawsuit filed by the Chief Public Prosecutor of the Court of Cassation to permanently close the Peoples' Democratic Party (HDP). The intervention in the case intends to provide the Constitutional Court with an expert analysis of the question of the compatibility of a potential dissolution of the HDP with global and European human rights law standards relevant to the restrictions on political parties, in particular dissolution of those parties. The purpose of this submission is to assist the Constitutional Court to ensure that the Constitutional principles and law on political parties are applied in a manner consistent with the international human rights obligations of Turkey.

8. Following a summary of the submission and this introduction, Section III of the intervention presents a summary of the bill of indictment of the Chief Public Prosecutor dated 7 June 2021 filed with the Constitutional Court. Section IV sets out relevant global and European human rights law standards governing the exceptional circumstances in which restrictions on the political parties may be justified. It highlights relevant findings of

the ECtHR and other international bodies which display systematic human rights violations arising from the Turkish authorities' practices. Finally, Section V underlines the obligation of the Constitutional Court to ensure implementation of the relevant ECtHR judgments and decisions of the Committee of Ministers in discharging its function as the supervisory body of the implementation process.

III. A summary of the Indictment

9. On 17 March 2021 a lawsuit was filed with the Constitutional Court with the indictment by the Court of Cassation's Chief Public Prosecutor for the permanent closure of the HDP pursuant to Article 69(6) of the Constitution and Articles 101(1)(b) and 103 of Law No. 2820 on Political Parties (the Law on Political Parties). On 31 March 2021, the Constitutional Court decided to return the indictment to the Chief Public Prosecutor's Office for failing to meet legal standards.

10. On 7 June 2021, the Chief Public Prosecutor filed a new bill of indictment putting forward the same request, for the permanent closure of the HDP pursuant to the same legal grounds. The basis of the indictment is the Prosecutor's allegation that the HDP has become the focus of actions contrary to the indivisible integrity of the Turkish State with its territory and nation, and that it has thus carried out actions contrary to Article 68(4) of the Constitution and Articles 78, 80, 81, 82 and 90 of the Law on Political Parties.

11. The bill of indictment is mainly based on the assertion that the HDP is the focus of activities carried out in line with the aims of the Kurdistan Workers' Party/Kurdistan Communities Union (PKK/KCK), proscribed as a terrorist organisation. According to the indictment, there is an organic link between the PKK/KCK and the HDP; the HDP's actions, which were presented as rightful activities aiming at upholding freedoms and democratic values, are in breach of the indivisible integrity of the State with its territory and nation and human rights; and the HDP's members, sub-bodies and organisations have taken part in the commission of crimes of this nature or encouraged them to be committed, or praised these crimes and those who committed them.

12. Based on these allegations the Chief Public Prosecutor requests the permanent closure of the HDP, the confiscation of its assets by the treasury and a political ban on its 451 prominent members including its co-chairs, MPs, and members of its executive branches.

IV. International law standards binding on the Constitutional Court in its determination of the dissolution request against HDP

A. A general analysis of the international law on the issue of dissolution of political parties

1. A brief assessment of the international law standards on the issue

13. Political parties are key actors in democratic societies, described by the European Commission for Democracy through Law (Venice Commission) and the Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) as the conduits "through which citizens organize themselves to participate in public life, among which they choose at elections, and through which elected officials

cooperate to build and maintain the coalitions that are the hallmark of democratic politics".[1] The international legal framework for protecting the rights of political parties is based mainly on the rights to freedom of association, expression and assembly, which are guaranteed by a number of regional and international human rights treaties.[2] The rights of every citizen to take part in the conduct of public affairs, the right to vote and to be elected, which are also protected under international human rights law, are also closely related with the functioning of political parties.[3] Turkey has ratified the ECHR and International Covenant on Civil and Political Rights (ICCPR) guaranteeing the rights mentioned above and it has also incorporated them into domestic law.[4]

14. Several regional mechanisms in Europe have also produced instruments establishing standards on the regulation of political parties.[5] In particular, the Venice Commission and the OSCE/ODIHR have adopted and published the Guidelines on Political Party Regulation (First edition in 2011 and the second edition in 2020) "to illuminate hard law and soft law

[1] European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), CDL-AD(2020)032, Guidelines on Political Party Regulation 2nd Edition; 14 December 2020, p. 5, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e.

[2] Freedom of association is guaranteed under Article 22 International Covenant on Civil and Political Rights (ICCPR), Article 11 European Convention on Human Rights (ECHR), Article 16 American Convention on Human Rights (ACHR), Article 10 African Charter on Human and Peoples' Rights (ACHPR). Freedom of expression is guaranteed under Article 19 of the ICCPR, Article 10 of the ECHR, Article 13 of the ACHR and Article 9 of the ACHPR. Right to freedom of peaceful assembly is guaranteed under Article 21 of the ICCPR, Article 11 of the ECHR, and Article 15 of the ACHR, and Article 11 of the ACHPR.

[3] See Article 25 ICCPR, Article 23 ACHR, Protocol No. 1 Article 3 ECHR.

[4] See Article 90 of the Constitution: "International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."
See also the preface of the Constitution also sets, inter alia, the aim to "attain the standards of contemporary civilization as an honourable member with equal rights of the family of world nations".

[5] See e.g. Parliamentary Assembly of the Council of Europe (PACE), Resolution 1736 (2010), Code of good practice in the field of political parties; PACE, Resolution 1601(2008), Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament; PACE, Resolution 1546 (2007), The code of good practice for political parties; PACE, Recommendation 1438 (2000) and Resolution 1344 (2003), The threat posed to democracy by extremist parties and movements in Europe; PACE, Resolution 1308 (2002), Restrictions on political parties in the Council of Europe member states Recommendation 1516 (2001), Financing of political parties; Report on financing of political parties, Doc. 9077 (2001); Report on restrictions on political parties in the Council of Europe member states, Doc. 9526 (2002); Report on incompatibility of banning democratically elected political parties with Council of Europe standards, Doc. 8467 (1999); Venice Commission, CDL-INF(2000)001, Guidelines on prohibition and dissolution of political parties and analogous measures, adopted by the Venice Commission at its 41st plenary session (10–11 December, 1999); Venice Commission, CDL-AD(2004)007rev, Guidelines and Explanatory Report on Legislation; on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (12-13 March 2004); Venice Commission, CDL-AD(2005)009, Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries adopted by the Council for Democratic Elections at its 12th meeting (10 March 2005) and the Venice Commission at its 62th Plenary Session (11-12 March 2005); Venice Commission, CDL-AD(2009)021, Code of Good Practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (12-13 December 2008) and Explanatory Report adopted by the Venice Commission at its 78th Plenary Session (13-14 March 2009); Venice Commission, CDL(2010)030, PACE Recommendation 1898(2010) on the "Thresholds and other features of electoral systems which have an impact on representativity of Parliaments in Council of Europe Member States" - Venice Commission Comments in view of the reply of the Committee of Ministers adopted by the Council for Democratic Elections at its 32nd meeting (11 March 2010) and by the Venice Commission at its 82nd plenary session (12-13 March 2010).

standards, as well as to provide examples of good practices for legislators tasked with drafting laws that regulate political parties".[6]

15. Under Article 22 of the ICCPR, the right to freedom of association specific to political parties requires states to guarantee the freedom to associate with others in the form of political parties. This provision only allows limitations "which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others".[7] Similar limitations are found in Article 11 of the ECHR, and Article 16 of the American Convention on Human Rights (ACHR).[8] In all cases, restrictions to be placed on freedom of association must be objective and necessary in a democratic society. However, the Venice Commission and the OSCE emphasize that, as the most severe of available restrictions, the prohibition or dissolution of political parties can be considered applicable only when all less restrictive measures have been deemed inadequate.[9]

16. With respect to the exercise of freedom of expression and opinion guaranteed under Article 19 of the ICCPR and Article 10 of the ECHR, the Venice Commission and OSCE make it clear that it "is dependent upon free association, when individuals want to exercise their right to freedom of expression collectively via an association such as a political party".[10] Therefore, freedom of association is also essential as a tool "to ensure that all individuals are able to fully enjoy their rights to freedom of expression and opinion, whether practiced collectively via an association or individually".[11] In this regard, it should be noted too that Article 19(3) of the ICCPR and Article 10(2) of the ECHR only allow for specific limitations by applying the same test used in the case of freedom of association.

17. Moreover, also relevant here is Article 25 of the ICCPR which recognizes that every citizen shall have the right and the opportunity, without undue restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections by universal and equal suffrage and secret ballot, guaranteeing the free expression of the will of the electors; and to have access, on general terms of equality, to public services in his or her country. In its General Comment 25, the UN Human Rights Committee (HRC) makes clear the importance of Article 25, noting that it "lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant…".[12]

18. The HRC emphasizes too that the exercise of rights protected under Article 25 is dependent on the "full enjoyment and respect for the rights guaranteed in articles 19, 21

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[6] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 5; see also Venice Commission and OSCE/ODIHR, CDL-AD(2010)024, Guidelines on Political Party Regulation 1st Edition, 25 October 2010.

[7] Article 22(2) ICCPR.

[8] While Turkey is not a party to the ACHR, the preface of the Turkish Constitution sets, inter alia, the aim to "attain the standards of contemporary civilization as an honourable member with equal rights of the family of world nations".

[9] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 109.

[10] Ibid, para. 79.

[11] Ibid.

[12] UN Human Rights Committee (HRC), CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 1.

and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas".[13] Lastly, the HRC underlines that "the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25", and that "political parties and membership in parties play a significant role in the conduct of public affairs and the election process".[14]

19. Unlike the articles on freedom of assembly and association which include specific text on limitations, Article 25 of the ICCPR only states that the right should not be subject to undue restrictions or conditions. However, the HRC has interpreted the obligations of States under Article 25 so as to make clear that "[t]he exercise of these rights by citizens may not be suspended or excluded except on grounds which are *established by law* and which are *objective and reasonable*"[15] and that "persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation".[16]

20. In the light of the above, it can be concluded that the rights of the political parties are protected based on several rights guaranteed under international human rights law and restrictions or dissolution of political parties should be regarded as exceptional measures. In this connection, the Guidelines on Political Party Regulation of the Venice Commission and OSCE/ODIHR underline that,

> *"the competence of state authorities to dissolve a political party or prohibit one from being formed should concern exceptional circumstances, must be narrowly tailored and should be applied only in extreme cases. Such a high level of protection is appropriate, given the fundamental role of political parties in the democratic process."*[17]

21. Accordingly, the Guidelines also underline that any restriction to the freedom of association of political parties should be strictly proportional, meaning that "as far as possible, less radical measures than dissolution should be used", and that if the state does resort to dissolution, it must demonstrate clearly that no less restrictive measure would have sufficed.[18]

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[13] Ibid. para. 25.
[14] Ibid. para. 26.
[15] Ibid para. 4 (emphasis added).
[16] Ibid. para. 15. According to the case law of the HRC if conviction for an offence is a basis for suspending the right to stand for office, "such restriction must be proportionate to the offence and the sentence", and the judicial proceedings resulting in the conviction must not violate the right to a fair trial. See e.g. HRC, *Andrés Felipe Arias Leiva v. Columbia*, no. 2537/2015, 27 July 2015, para. 11.6.
[17] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 106; Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation (1st Edition), (n 7) para 89.
[18] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 113; see also Venice Commission, CDL-INF(2000)001, Guidelines on prohibition and dissolution of political parties and analogous measures, adopted by the Venice Commission at its 41st plenary session (10–11 December, 1999), para. 5.

2. A comparative analysis of the Council of Europe country practices on political party dissolution

22. A general comparative overview of national regulations on party closure of Member States of Council of Europe and their relevant practices also shows how party dissolutions are considered as exceptional and extreme measures in democratic societies.

23. While there is a considerable diversity of national regulations on party closure,[19] as the Venice Commission also underlines, in practice, the dissolution of political parties may be only justified in extreme cases:

> *"In a number of European states, there are no rules on prohibition of parties. In other states, there are rules on party prohibition, but these are strictly interpreted, and are only to be used with extreme restraint. In line with this common European democratic legacy, 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."*[20]

24. In addition, the Venice Commission states as follows:

> *"There is a common practice for allowing parties which advocate fundamental changes in the form of government, or which advocate opinions that the majority finds unacceptable. Political opinions are not censored by way of prohibition and dissolution of the political party concerned, while illegal activities by party members are sanctioned through the ordinary criminal law system."*[21]

25. At the same time, the Venice Commission also notes that "[t]he very few and scattered cases in which political parties have actually been prohibited in Europe in modern times have all (with the exception of Turkey) concerned marginal and extremist parties."[22] Moreover, the Commission draws attention to the jurisprudence of the German Federal Constitutional Court, which has held that "the basis for prohibiting a party must go beyond its anti-democratic opinions so as to also require the showing (with a high standard of proof) of a fixed purpose to combat the basic democratic order constantly and resolutely manifested in political action according to a fixed plan".[23]

26. According to our research, out of 46 Council of Europe Member States (following Russia's expulsion in March 2022), 13 countries do not have any legal basis for political party dissolution.[24] Out of 33 countries that have a legal basis for it, 20 countries have not

[19] Venice Commission, CDL-PI(2021)016rev, Compilation of Venice Commission Opinions and Reports Concerning Political Parties (revised in October 2021), 18 November 2021, p. 66.
[20] Ibid. p. 8.
[21] Ibid. p. 65.
[22] Ibid. p. 66.
[23] Ibid. Also in 2017 the German Federal Constitutional Court refused to shut down the *Nationaldemokratische Partei Deutschlands* (NPD), a far-right neo-Nazi party, despite its finding that the party advocated a political concept aimed at abolishing the existing free democratic basic order, the Court considered that given its lack of political significance, there was no indication that it constituted an actual threat to democracy and could succeed in achieving this aim.
[24] Austria (except for a ban on organisations reviving the Nazi party), Belgium, Cyprus, Greece, Hungary, Iceland, Ireland, Liechtenstein, Luxemburg, Monaco, Norway, San Marino, and Switzerland.

dissolved a political party since 1949, the establishment of the Council of Europe.[25] Furthermore, since the early 1990s, only 13 countries[26] out of 46 Member States have dissolved a political party, and in most States which have done so, this has only happened once or twice over the course of 30 years**.** [27] It must be underlined that some of these enforced party closures were brought before the ECtHR and resulted in the Court's finding of violation of Article 11 of the Convention, among others.[28]

27. However, practice in Turkey stands in sharp contrast to the practice in the Council of Europe Member States that is noted above. Notably, a striking number of 19 political parties have been dissolved by the Constitutional Court of Turkey since early 1990s, many failing to pass the scrutiny of the ECtHR.[29] These cases are analysed in the next section.

B. Standards developed by the ECtHR in its application of Article 11 -in light of Article 10- to the dissolution cases

28. Among other regional and international human rights mechanisms, the ECtHR has developed the most comprehensive case-law setting detailed standards in relation to limitations imposed on political parties, largely owing to the cases brought before it from Turkey.[30] These standards are directly relevant to the case before the Constitutional Court and will therefore be discussed in this section in detail.

29. The ECtHR has repeatedly "affirmed the direct relationship between democracy, pluralism and the freedom of association and has established the principle that only convincing and compelling reasons can justify restrictions on that freedom".[31] Political parties are considered a form of association essential to the proper functioning of democracy,[32] and any restriction on political parties is subject to rigorous supervision by the Court under Article 11.[33]

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[25] Albania, Andorra, Armenia, Bosnia, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Italy, Malta, Montenegro, Macedonia, Poland, Moldova, Serbia, Slovenia, and Sweden.

[26] Party dissolutions in Azerbaijan, Latvia and Lithuania took place before their membership to the CoE.

[27] Azerbaijan (Islamic Party of Azerbaijan, 1995), Belgium (In 2004, the nationalist right-wing party Vlaams Blok was found by Belgian courts to have breached criminal legislation on racism and xenophobia by overtly inciting hatred and discrimination, and the Belgian Supreme Court ordered that state funding of the party be cut - in effect disbanding the party), Bulgaria (United Macedonian Organisation Ilinden-Pirin, 2000), Czech Republic (Workers' Party 2010), Greece (Golden Dawn, 2020), Latvia (Communist Party of Latvia), Lithuania (Communist Party of Lithuania), Netherlands (Centre Party´86, 1998), Portugal (Movimento de Acçao Nacional, 1994- dismissed due to self-dissolution of the party; Força de Unidade Popular, 2004), Romania (Communist Party 2008), Slovak Republic (Slovak Community-National Party, 2006), Spain (Herri Batasuna, 2003; Euskal Herritarrok 2003; Batasuna, 2003; Eusko Abertzale Ekintza, 2008; Communist Party of the Basque Territories, 2008; Askatasuna, 2009; Turkey (see the following subsection for the examples); Ukraine (Communist Party of Ukraine 1991; Russian Bloc, 2014; Russian Unity 2014; Communist Party of Ukraine, 2015; also recently 11 pro-Russian political parties were suspended by Ukraine under martial law in the context of war with Russia).

[28] See e.g. ECtHR, *United Macedonian Organisation Ilinden-Pirin v. Bulgaria and Others,* App. no. 59489/00, 20 October 2005; *Ignatencu and the Romanian Communist Party v. Romania,* App. no. 78635/13, 5 May 2020.

[29] See Euronews, '*Türkiye'de siyasi parti kapatmaları: Geçmişte hangi partiler yasaklandı?*', 21 June 2021.

[30] Svetlana Tyulkina, 'Fragmentation in International Human Rights Law: Political Parties and Freedom of Association in the Practice of the UN Human Rights Committee, European Court of Human Rights and Inter-American Court of Human Rights' (2014), Nordic Journal of Human Rights, 157-170.

[31] ECtHR, *Gorzelik and Others v. Poland* [GC], App. No. 44158/98, 17 February 2004, para 88.

[32] ECtHR, *United Communist Party of Turkey and Others v. Turkey,* App no. 19392/92, 30 January 1998, para. 25.

[33] ECtHR, *Gorzelik and Others v. Poland* [GC], para. 88.

30. An interference with the right to freedom of association is only justified if it satisfies the requirements of Article 11(2), so called "three part test", i.e., it was "prescribed by law", pursued one or more legitimate aims and was "necessary in a democratic society". These conditions must also be satisfied in the political party dissolution cases, as the Court's established case-law has repeatedly found that a political party's dissolution and the measures which accompanied it amount to an interference in the right to freedom of association in respect to the party and to its founders and leaders.[34]

31. It should be noted that the state's duty to protect freedom of association of political parties extends to cases where a party espouses ideas that do not enjoy the support of the majority of society, as long as the promotion of such ideas does not involve or advocate the use of violence or is not aimed at the destruction of democracy.[35] In this connection, in cases concerning restrictions on political parties, the Court has on numerous occasions stated that "the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association enshrined in Article 11" and held 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".[36] Accordingly, it is worth also noting that the Court has repeatedly emphasised in its case-law the importance of freedom of expression for members of parliament, this being political speech *par excellence*.[37] It has underlined that freedom of expression is especially important for an elected representative of the people, and that interferences with the freedom of expression of an opposition member of parliament call for the closest scrutiny on the part of the Court.[38]

Prescribed by law requirement

32. According to the Court's established case-law, the expression "prescribed by law" requires firstly that the impugned measures should have a basis in domestic law.[39] But it also refers to the "quality of law" in question, requiring that it be accessible to the persons concerned and foreseeable as to its effects.[40] The Court has considered that a law is 'foreseeable' if it is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct".[41] In this connection, the Court has also stated as follows:

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[34] See e.g., ECtHR, *Socialist Party and Others v. Turkey*[GC], App. no. 21237/93, 25 May 1998; *United Communist Party of Turkey and Others v. Turkey[GC]*, App. no. 19392/92, 30 January 1998; *Yazar and Others v. Turkey*, App. nos. 22723/93 and 2 Others, 9 April 2002; *Refah Partisi and Others v. Turkey[GC],* App. Nos. 41340/98 and 3 others, 13 February 2003; *Hadep and Demir v. Turkey*, App. no. 28003/03, 14 December 2010; *Party for a Democratic Society (DTP) and Others v. Turkey*, App. nos. 3840/10 and 6 others, 12 January 2016.
[35] See e.g. ECtHR, *Yazar and Others v. Turkey*, App nos. 22723/93 and 2 others, 9 April 2002, para. 49; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], App. nos. 41340/98 and 3 others, 13 February 2003, para. 99; *Kalifatstaat v. Germany* (dec.), no. 13828/04, 11 December 2006.
[36] See for example, *Socialist Party and Others v. Turkey* [GC], App. No. 21237/93, 25 May 1998, para. 41; *United Communist Party of Turkey and Others* v. Turkey [GC], App. No. 19392/92, 30 January 1998, para. 42; *Refah Partisi and Others v. Turkey [GC],* App. Nos. 41340/98 41342/98 and 41343/98, paras. 87-88; *Hadep and Demir v. Turkey*, App. no. 28003/03, 14 December 2010, para. 56; *DTP and Others v. Turkey*, paras. 83-111.
[37] ECtHR, App. No. 11798/85, *Castells v. Spain,* App no. 23 April 1992, para. 42.
[38] Ibid.
[39] ECtHR, *Refah Partisi and Others v. Turkey*[GC], para. 57.
[40] Ibid.
[41] ECtHR, *N.F. v. Italy*, App. no. 37119/97, 2 August 2001, para. 29.

"For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. The law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise."[42]

33. More specifically, legislation permitting the prohibition or dissolution of political parties "should specify narrowly formulated criteria, describing the extreme cases in which prohibition and dissolution of political parties is allowed".[43]

34. According to these criteria, the provisions in the Turkish Constitution and legislation on prohibition and dissolution of political parties would appear to fail to satisfy the "prescribed by law" test.

35. Firstly, as the Venice Commission underlined in its "Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey", analysis of the domestic rules on prohibition and dissolution of political parties, together with the frequent application of those rules by the Turkish authorities for dissolution of political parties, reveals serious concerns.[44]

36. Articles 68 and 69 of the Constitution constitute the main provisions on party prohibition. While Article 68(4) states the material criteria with which the parties must comply[45], Article 69 regulates the criteria and procedure for dissolving parties.[46] According

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[42] ECtHR, *Maestri v. Italy*, App. no. 39748/98, 17 February 2004, para. 30,

[43] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 109.

[44] Venice Commission, Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009), https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)006-e .

[45] Article 68 (4) states as follows*: "The statutes and programs, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime."*

[46] Relevant parts of Article 69 include . *(1) The decision to dissolve a political party permanently owing to activities violating the provisions of the fourth paragraph of Article 68 may be rendered only when the Constitutional Court determines that the party in question has become a centre for the execution of such activities. […]*
(5) The dissolution of political parties shall be decided finally by the Constitutional Court after the filing of a suit by the office of the Chief Public Prosecutor of the Republic.
(6) The permanent dissolution of a political party shall be decided when it is established that the statute and program of the political party violate the provisions of the fourth paragraph of Article 68.
(7) The decision to dissolve a political party permanently owing to activities violating the provisions of the fourth paragraph of Article 68 may be rendered only when the Constitutional Court determines that the party in question has become a centre for the execution of such activities. A political party shall be deemed to become the centre of such actions only when such actions are carried out intensively by the members of that party or the situation is shared implicitly or explicitly by the grand congress, general chairmanship or the central decision-making or administrative organs of that party or by the group's general meeting or group executive board at the Turkish Grand National Assembly or when these activities are carried out in determination by the abovementioned party organs directly.
(8) Instead of dissolving them permanently in accordance with the above-mentioned paragraphs, the Constitutional Court may rule the concerned party to be deprived of State aid wholly or in part with respect to intensity of the actions brought before the court.
(9) A party which has been dissolved permanently cannot be founded under another name.

to Article 68(4), "neither the statutes and programmes nor the activities of a political party should be 'in conflict' with:

- the independence of the state,
- the indivisible integrity of its territory and nation,
- human rights,
- the principles of equality and the rule of law,
- the sovereignty of the nation,
- the principles of the democratic and secular republic;
- shall not aim to protect or establish class or group dictatorship or dictatorship of any kind,
- shall not incite citizens to crime."[47]

37. Criteria such as "the indivisible integrity of its territory and nation" or "the principles of the democratic and secular republic" are formulated in very broad terms.[48] This allows for subjective interpretation. Moreover, the list of material criteria laid down under Article 68(4) is "supplemented with the provisions in the Law on Political Parties[49], Articles 78 to 96, which outline a number of additional 'bans' on party opinions or activities".[50] Arguably, these ordinary law provisions, such as Article 80 of the Law on Political Parties on "Protection of the principle of unity of the state" and Article 81 on "Preventing the creation of minorities", interpret and extend some of the criteria of Article 68(4) of the Constitution.[51] These provisions have been invoked in several cases as the basis for prohibiting political parties mainly representing the Kurdish electorate.[52] Notably, "while Article 68(4) of the Constitution protects the 'territorial integrity' of the state, Article 80 of the Law extends this to protect the unitary nature of the state as such, thus for example banning calls for a more federal system of government."[53] Another example concerns the prohibition in Article 81 of the Law on Political Parties against "the creation of minorities". This provision appears to extend the concept of "indivisible integrity" beyond the wording of Article 68(4) of the Constitution.[54] In fact, the constitutionality of such provisions in the Law on Political Parties is questionable.

38. In addition to the problems arising from the substantive rules stated above, the Venice Commission also pointed out several problematic procedural rules concerning the prohibition of political parties in Turkey. Most notably, only the Chief Public Prosecutor of the Court of Cassation has the competence to take action against political parties and

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(10) The members, including the founders of a political party whose acts or statements have caused the party to be dissolved permanently cannot be founders, members, directors or supervisors in any other party for a period of five years from the date of publication in the official gazette of the Constitutional Court's final decision and its justification for permanently dissolving the party. […]

[47] Venice Commission, Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey, (n 1) para. 73.

[48] Ibid. para. 74.

[49] Law no. 28280.

[50] Ibid. para. 75.

[51] Ibid. See also Doç. Dr. Oktay Uygun, "*Siyasi Partilerin Kapatılması Rejiminin Avrupa İnsan Hakları Sözleşmesi Çerçevesinde Değerlendirilmesi"*, https://www.anayasa.gov.tr/files/pdf/anayasa_yargisi/anayargi/uygun.pdf

[52] Venice Commission, Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey, (n 51), para. 76.

[53] Ibid. para. 76.

[54] Ibid. para. 77.

may do so by initiating cases "*ex officio* and according to his or her own discretion", unhindered by political checks.[55] "This stands in contrast to other European countries that have rules on party closure, in which – because of the exceptional nature of such cases – the decision to raise a case either rests with democratic political institutions or at least is subject to some element of direct or indirect democratic control."[56]

39. In practice, the interpretation of the rules in the Turkish Constitution and legislation on prohibition and dissolution of political parties by the domestic judicial authorities have resulted in numerous political party dissolution cases before the Constitutional Court.[57] The following political parties are among those dissolved by the Constitutional Court since 1990:

- The United Communist Party of Turkey (TBKP) – dissolved in July 1991,
- The Socialist Party (SP) – dissolved in July 1992,
- The Freedom and Democratic Party (ÖZDEP) – dissolved in July 1993,
- The People's Labour Party (HEP) – dissolved in July 1993,
- The Socialist Party of Turkey (STP) – dissolved in November 1993,
- The Democracy Party (DEP) – dissolved in June 1994,
- The Labour Party (EP) – dissolved in February 1997,
- The Welfare Party (Refah) – dissolved in January 1998,
- The Virtue Party (Fazilet) – dissolved in June 2001,
- The People's Democracy Party (HADEP) – dissolved in March 2003,
- The Party for a Democratic Society (DTP) – dissolved in December 2009.

40. The majority of these dissolution decisions of the Constitutional Court concerned political parties representing the interests of Kurds in Turkey on the grounds that they had violated the provisions protecting the indivisible territorial and national integrity of the state.[58]

41. Consequently, the broad criteria under Article 68(4), the extension of these criteria by the provisions of the Law on Political Parties and the procedure for dissolving political parties, call into question the compatibility of domestic authorities' measures dissolving political parties with the "prescribed by law" requirement. Frequent application of party dissolution measures based on these criteria also confirms the problematic nature of the relevant Turkish rules in place and their application by the judicial and prosecutorial authorities.[59]

42. Although one additional qualification was introduced in the 2001 constitutional amendment, when the criterion was introduced into Article 69(7) that for a party to be dissolved it must be a "centre for the execution of such activities" as mentioned in Article 68(4), it is hard to argue that this has been sufficient to "raise the threshold for invoking

[55] Ibid. para. 84.
[56] Ibid.para. 85.
[57] According to information available on the Constitutional Court's official website, there have been 41 political party dissolution cases opened before the Constitutional Court since 1982, https://www.anayasa.gov.tr/tr/mahkeme/tarihi/5/
[58] The Freedom and Democratic Party (ÖZDEP), the People's Labour Party (HEP), The Democracy Party (DEP), the Labour Party (EP), the People's Democracy Party (HADEP), the Party for a Democratic Society (DTP).
[59] There have been 41 political party dissolution cases opened before the Constitutional Court since 1982.

Articles 68 and 69 to a level where this would only take place in exceptional circumstances".[60] Notably, the Constitutional Court still found in 2008 and 2009 that the Justice and Development Party (AKP, the current governing party) and the DTP -the predecessor of the HDP- had been the centre of activities mentioned in Article 68(4).[61]

43. It follows that domestic rules as a whole do not seem to "afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention".[62] In this regard, the Venice Commission also concluded as follows:

> *"... 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."*[63]

44. Secondly, in practice, political party dissolution cases before the Constitutional Court, in particular the cases concerning pro-Kurdish political parties, have heavily relied on evidence based on the political activities of party members and representatives. These have consisted of their speeches and non-violent political activities protected under Articles 10 and 11 of the Convention which the Turkish courts have prosecuted as terrorism-related offenses. The ECtHR's findings in the cases of *Yazar and Others v. Turkey*, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, *HADEP and Demir v. Turkey*, and *DTP and Others v. Turkey*[64] affirm this pattern.

45. In this connection, it should be noted that, while the "quality of law" criterion entails that the law should be accessible to the persons concerned, and foreseeable as to its effects, the expansive interpretation of anti-terrorism laws in Turkey has been condemned by the ECtHR in numerous cases as contravening the principles of 'foreseeability' and 'proportionality'.[65] These cases illustrate how participation in a public march, funeral or demonstration, or expression of opinion of a non-violent nature, have been construed as acting "*in support of*", "*on behalf of*" or "*aiding*" an illegal organization or led to convictions for "*membership*" of illegal organisations under Articles 314, 220(6) or (7) of the Criminal Code. Following the Court's case law on this issue, the Constitutional Court should be at pains to avoid relying on political activities that amount to the exercise of

[60] Venice Commission, Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey, (n 1), para. 82.
[61] In 2008, AK Party closing case, ten out of the 11 judges found that the AKP had exploited religious feelings for the sake of political interests and had become the focus of activities contradicting the principles of a democratic and secular republic (Constitutional Court, E. 2008/1, k. 2008/2, 30 July 2008). In 2009, DTP party closure case, the Constitutional Court unanimously found that the DTP had been the centre of activities contradicting with the State's indivisible integrity of its territory and nation (Constitutional Court, E. 2007/1, K. 2009/4, 11/12/2009).
[62] ECtHR, *Maestri v. Italy*, App. No. 39748/98, 17 February 2004, para. 30,
[63] Venice Commission, Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey, (n 1), para. 106
[64] ECtHR, *Yazar and Others v. Turkey*, paras. 53-61; *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, paras 50-66; *HADEP and Demir v. Turkey*, paras. 56-82; *DTP and Others v. Turkey*, paras. 83-111.
[65] See e.g., ECtHR, *Yılmaz and Kılıç v Turkey*, App. no. 68514/01; *Gül and or. v Turkey*; *Gülcü v Turkey*, App. no. 17526/10, 19 Jan.2016; *Işıkırık v Turkey*, App. no. 41226/09, 14 Nov,2017; *İmret v Turkey*; *Bakır and Others v. Turkey*, App. 46713/10, 10 Jul. 2018; *Selahattin Demirtaş v. Turkey (no. 2)*, App. no. 14305/17, 22 December 2020.

Convention rights under Articles 10 and 11 of the Convention, as the basis on which to dissolve a political party.

46. Thirdly, and finally, Article 69(6) of the Constitution states that "A political party shall be deemed to become the centre of such actions only when such actions are carried out intensively by the members of that party or the situation is shared implicitly or explicitly by the grand congress, general chairpersonship or the central decision-making or administrative organs of that party or by the group's general meeting or group executive board at the Grand National Assembly of Turkey or when these activities are carried out in determination by the abovementioned party organs directly". However, neither the Constitution nor the Law on Political Parties is clear on whether final conviction delivered by criminal courts is necessary to prove that such actions are carried out intensively by the members of the party.

47. This is crucial for a number of reasons. First, as there is no clarity concerning the use of pending criminal cases in party dissolution cases, it is submitted that the relevant rules fail to meet the quality of law requirement developed by the European Court's jurisprudence. Second, relying on pending criminal cases, rather than final convictions as evidence in dissolution cases, interferes with the presumption of innocence of politicians.[66] Third, as noted above, prosecutors, especially in recent years, arbitrarily charge individuals with terror related crimes. There is a high probability that the individual might be acquitted later. Therefore, the quantity as well as content of indictments against party members might be misleading. Fourth, if the Constitutional Court decides to dissolve a political party relying on pending criminal cases the decision of the Constitutional Court will highly likely to affect the decisions of criminal courts. Considering that the Constitutional Court would decide that the relevant individual's activities to be contrary to the independence of the State, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic, this conclusion could be seen as a criminal charge within the meaning of the concept under Article 6 of the ECHR. This result would also affect politicians' right to submit individual applications to the Constitutional Court. If the Constitutional Court concludes that a politician's speech constitutes a piece of evidence that leads to the dissolution of a political party, even before he/she was convicted, then the same court will not be able to examine a possible individual application that might be submitted following conviction.

Legitimate aim requirement

48. Any limitations on political parties that restrict their right and their members' right to freedom of association must pursue at least one of the legitimate aims set out in Article 11(2), i.e., national security or public safety, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others. Exceptions to freedom of association must be narrowly interpreted, such that their enumeration is strictly exhaustive, and their definition is necessarily restrictive.[67]

[66] In 2009 DTP party closure case, the Constitutional Court (see n 61) seems to have relied on criminal cases and convictions of DTP members without duly considering if they were final at the time of the judgment.
[67] ECtHR, *Sidiropoulos and Others v. Greece,* App. no. 26695/95, 10 July 1998.

49. The ECtHR, in its case law, has generally not reviewed the dissolution of political parties primarily in terms of whether or not their dissolution pursued one of the legitimate aims listed in Article 11, such as protection of national security and public safety, prevention of disorder or crime and protection of the rights and freedoms of others, but rather in terms of whether the dissolution was necessary and proportionate to the legitimate aim invoked. However, in this context, it is worth noting that Article 18 of the ECHR is also relevant to judicial consideration of the legitimacy of the aims underlying restrictions of rights. Article 18 specifies the obligation on States not to restrict rights under the Convention for any purpose other than that for which they have been prescribed. Where there is a risk that a State is using political party dissolution to stifle pluralism, to limit freedom of political debate -which is at the very core of the concept of a democratic society- and to provide an undue advantage to other political parties, this may also fall foul of Article 18 (see the detailed discussion under *IV.D. Article 18 of the Convention and its application to cases in Turkey, paragraphs 77-98*).[68]

50. Where restrictions are in fact pursuant to legitimate aims, they still have to be necessary and proportionate in a democratic society, which is the next element of the test – and one robustly applied by the ECtHR in the cases related to freedom association and freedom of expression.

The Necessity and Proportionality requirement

51. Under Article 11 of the Convention, any limitation imposed on the rights of political parties must be necessary in a democratic society – pursuant to a "pressing social need"-, proportionate to the legitimate aim pursued and the reasons adduced by the national authorities to justify it be "relevant and sufficient".[69]

52. The Court, having regard to the essential role of political parties in ensuring pluralism and the proper functioning of democracy, has repeatedly underlined that the exceptions set out in Article 11(2) are to be "construed strictly" where political parties are concerned.[70] Accordingly, only convincing and compelling reasons can justify restrictions on such political parties' freedom of association.[71] 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.[72]

Pressing social need

53. The dissolution of an entire political party is considered as a drastic measure which endangers political pluralism or fundamental democratic principles.[73] Therefore, such measures may be taken only in the most serious cases.[74] The Court has explained the importance of pluralism and dialogue in democracies while also defining the broad limits

[68] See, mutatis mutandis, ECtHR *Selahattin Demirtaş v. Turkey (no. 2)*, App. no. 14305/17, 22 December 2020, paras 421-438.
[69] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 51.
[70] See e.g. ECtHR, *United Communist Party of Turkey and Others v. Turkey*, para. 46; *HADEP and Demir*, para. 59.
[71] Ibid.
[72] Ibid.
[73] ECtHR, *Party for a Democratic Society (DTP) and Others v. Turkey*, 2016, para. 101; *Herri Batasuna and Batasuna v. Spain*, App. nos. 25803/04 and 25817/04, 30 June 2009, para. 78; *Linkov v. the Czech Republic*, App. no. 10504/03, 7 December 2006, para. 45.
[74] Ibid.

within which political groups can continue to enjoy the protection of the Convention while conducting their activities, as follows:

> *"(...) 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."*[75]

54. In *Refah Partisi and Others*, the Court underlined three points relevant to determining whether the dissolution of a political party on account of a risk of democratic principles being undermined met a "pressing social need". According to this test, a "pressing social need" might be met, if : (i) the risk to democracy was sufficiently imminent; (ii) the acts and speeches of the leaders and members of the political party concerned could be imputed to the party as a whole; and (iii) the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a "democratic society".[76] Moreover, the Court said, overall examination of these points had to take account of the historical context in which the dissolution of the party concerned took place.[77]

55. While States may only intervene preventively if it has been established sufficiently that a policy which is incompatible with the standards of the Convention and democracy presents an imminent danger, the constitution and programme of a political party or the statements of its leaders cannot be taken into account separately as the sole criterion for assessing the danger. In this connection, the Court stated as follows:

> *"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."*[78]

56. In their assessments, the domestic courts need to consider the party programme when determining the aim of the political party and must carefully consider whether the party is contradicting principles and rules of democracy. When it comes to the assessment of the actions of the party and its leaders, it should be borne in mind that a political party cannot be held responsible for activities and speeches of their members not authorized by the party.[79]

57. A political party's campaign for a change in the law or the legal and constitutional structures do not as such justify the State's interference. Political parties may promote

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[75] ECtHR, *United Communist Party of Turkey and Others v. Turkey*, para. 57; *HADEP and Demir*, para. 60.
[76] ECtHR, *Refah Partisi and Others*, para. 104.
[77] Ibid.
[78] ECtHR, *HADEP and Demir v. Turkey*, para. 62; *Yazar and Others(HEP)* v. Turkey, para. 50.
[79] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 118.

changes of the law or legal and constitutional structure in the party's programme or its activities, firstly, if the means used to that end are in every respect legal and democratic,[80] and secondly, if the changes proposed themselves are compatible with fundamental democratic principles.[81] It is to be noted that where there has been no evidence of undemocratic intentions, the Court has found violations of Article 11, including in a number of cases against Turkey, the majority of which concerned pro-Kurdish political parties.[82]

Proportionality

58. As the Venice Commission and OSCE/ODIHR also underline in their Guidelines, any limitation on the formation or regulation of the activities of political parties must be proportionate in nature and time, and effective in achieving its specified purpose.[83] While a limitation on a political party must be proportionate and the least intrusive means to achieve the respective objective, it should be emphasised that dissolution of a political party is the most severe sanction available and it can be applied only as an instrument of last resort in extreme cases of the most grave violations.[84]

The ECtHR's findings directly concerning dissolution of pro-Kurdish political parties in Turkey

59. In addition to criteria and principles cited above, some of the findings of the ECtHR in relation to the issue of political party dissolution are particularly relevant to the case before the Constitutional Court. Firstly, according to the ECtHR, the mere fact that a political party calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – is not a sufficient basis to justify its dissolution on national security grounds.[85] In this connection the Court states as follows:

> *"In a democratic society based on the rule of law, political ideas which challenge the existing order without putting into question the tenets of democracy, and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through, inter alia, participation in the political process."*[86]

60. Based on this evaluation, the ECtHR held in *HADEP and Others v. Turkey*, and *Yazar and Others (HEP)* that advocating the right to self-determination and the recognition of

[80] See e.g. ECtHR, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey* para. 46; Y*azar and Others v. Turkey* para. 49*; Hadep v. Turkey*, para. 54.
[81] Ibid.
[82] ECtHR, *Yazar and Others v. Turkey*, paras. 53-61; *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, paras 50-66; *HADEP and Demir v. Turkey*, paras. 56-82;
[83] Venice Commission and OSCE/ODIHR, Guidelines on Political Party Regulation 2nd Edition (n 1), para. 50.
[84] Ibid. paras. 50-52. See ECtHR, *Socialist Party and Others v. Turkey*, para. 51; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], , para. 132 ("measures of such severity might be applied only in the most serious cases… the nature and severity of the interference are also factors to be taken into account when assessing its proportionality").
[85] ECtHR, *the United Macedonian Organisation Ilinden - Pirin and Others v. Bulgaria*, App. No. 59489/00, 20 October 2005.
[86] Ibid. para. 115; *Republican Party of Russia v. Russia*, App. No. 12976/07, 12 April 2011, para. 123.

Kurdish language rights or Kurdish identity were not themselves contrary to the fundamental principles of democracy.[87] The Court also underlined that:

> *"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."*[88]

61. Moreover, in *DTP and Others v. Turkey*, the Court also held that even if a parallel were to be established between the principles defended by the DTP and those of the PKK, this would not suffice to conclude that the party approved of the use of force in order to implement its policy.[89]

62. It is worth noting that the ECtHR has ruled on the merits under Article 11 on a significant number of political party dissolution cases against Turkey and the great majority of them concerned parties representing Kurdish interests dissolved based on alleged violations of the provisions protecting the indivisible territorial and national integrity of the state. [90] The Court has found violations of Article 11 of the Convention in all of the cases concerning pro-Kurdish political parties, mostly on the ground that the dissolution of those parties could not reasonably be said to have met "a pressing social need". In the case of *DTP and Others*, the Court held that there was no reasonable relationship of proportionality between the dissolution of the DTP and the legitimate aims pursued. In particular, the Court, found that the Constitutional Court had imposed on the DTP the most severe of the measures laid down by the Constitution by ordering the party's dissolution and its liquidation and the transfer of its assets to the Treasury, rather than a less drastic measure depriving it partially or entirely of financial assistance from the State.[91]

The differences between the case of Herri Batasuna and Batasuna v. Spain and the pro-Kurdish party closure cases before the ECtHR

63. The case of *Herri Batasuna and Batasuna v. Spain* concerned the dissolution of two political parties advocating Basque independence on the grounds that they were a part of and controlled by Euskadi Ta Askatasuna (Basque Country and Freedom, ETA) - according to the courts, an organisation that used violence and terror to realise its aims - and that the

[87] ECtHR, *HADEP and Others v. Turkey*, para. 79; *Yazar and Others (HEP) v. Turkey,* para. 57; *Party for a Democratic Society (DTP) and Others*, para. 78.
[88] ECtHR, *HADEP and Others v. Turkey*, para. 79; *Yazar and Others (HEP) v. Turkey,* para. 57; *Party for a Democratic Society (DTP) and Others,* para. 79.
[89] ECtHR, Party for a *Democratic Society (DTP) and Others*, para. 79.
[90] Parties known as parties representing Kurdish interests: ECtHR, *Yazar and Others v. Turkey (HEP),* App. nos. 22723/93 and 2 Others, 9 April 2002; *Dicle for the Democratic Party (DEP) of Turkey v. Turkey,* App No. 25141/94, 10 December 2002; *Democracy and Change Party and Others v. Turkey*, App. nos. 39210/98 39974/98, 26 April 2015; *Emek Partisi and Şenol v. Turkey,* App. no. 39434/98, 31 May 2005;*Demokratik Kitle Partisi and Elçi v. Turkey*, App. no. 51290/99, 3 May 2007; *Hadep and Demir v. Turkey*, App. no. 28003/03, 14 December 2010; *Party for a Democratic Society (DTP) and Others v. Turkey*, App. nos. 3840/10 and 6 others, 12 January 2016.
The other party dissolution cases against Turkey were: ECtHR, *Socialist Party and Others v. Turkey*[GC], App. no. 21237/93, 25 May 1998; *United Communist Party of Turkey and Others v. Turkey[GC],* App. no. 19392/92, 30 January 1998; *Refah Partisi and Others v. Turkey[GC],* App. Nos. 41340/98 and 3 others, 13 February 2003.
[91] ECtHR, *Party for a Democratic Society (DTP) and Others*, para. 109.

parties' own conduct breached democratic principles and human rights.[92] This case, in which the ECtHR found no violation of Article 11, was referred to in the Constitutional Court's previous ruling dissolving the DTP, and is also cited in the indictment against the HDP.[93] Despite the Turkish authorities' reliance on this case to justify the dissolution of pro-Kurdish political parties DTP and HDP, there are significant differences that should be noted between the case of *Herri Batasuna and Batasuna v. Spain* and the context in which pro-Kurdish political parties have been dissolved in Turkey.

64. Firstly, the ECtHR, in its judgment, rejected the applicant parties' argument that the dissolution of the political parties *Herri Batasuna* and *Batasuna* had been aimed at eliminating political debate concerning the left-wing Basque independence movement, relying on the fact that other so-called "separatist" parties, advocating independence or nationalism, co-existed peacefully in several autonomous communities in Spain.[94] In Turkey, this is not the case: political parties representing Kurdish interests have been systematically dissolved by the Constitutional Court's decisions, leading the ECtHR to find repeated violations under Article 11 of the Convention.[95] The closure of pro-Kurdish parties has hindered a healthy democratic debate, considering that political parties make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society. Moreover, while Herri Batasuna and Batasuna were small political parties barely represented in the Spanish national parliament,[96] HDP is the third biggest political party represented in the Turkish Parliament supported by millions of voters. Its dissolution would have a greater negative impact on the political debate in Turkey.[97]

65. Secondly, in *Herri Batasuna and Batasuna*, the ECtHR stated that the conduct *Herri Batasuna* and *Batasuna* was accused of included conduct "bear[ing] a strong resemblance to explicit support for violence *and the commendation of people seemingly linked to terrorism*" that could be "capable of provoking social conflict between supporters *of the applicant parties and other political organisations, in particular those of the Basque country".* [98] In that connection, the Court noted that the party leaders and representatives "not only had slogans in support of ETA prisoners" but also used "threatening expressions".[99] By contrast, in the context of the pro-Kurdish political parties in Turkey, the ECtHR repeatedly found that the aims set out in their political party programme were peaceful, democratic and compatible with the rule of law and respect for human rights,[100] that the leaders of those parties did not encourage violence, armed resistance or insurrection,[101] and that the severe, "hostile criticisms" made by members of those parties "about certain actions of the armed forces in their anti-terrorist campaign cannot in

[92] ECtHR, *Herri Batasuna and Batasuna v. Spain*, App. nos. 25803/04 and 25817/04, 30 June 2009.
[93] Constitutional Court, E. No. 2007/1 K. No. 2009/4, 11 December 2019; the indictment of the the Court of Cassation's Chief Public Prosecutor dated 7 June 2021, p 841.
[94] ECtHR, *Herri Batasuna and Batasuna v. Spain*, para. 63.
[95] The Freedom and Democratic Party (ÖZDEP), the People's Labour Party (HEP), the Democracy Party (DEP), Democracy and Change Party (DDP) and Others, the Labour Party (EP), the People's Democracy Party (HADEP), the Party for a Democratic Society (DTP).
[96] *Herri Batasuna* had gained two deputy seat at the Spanish parliament in 1996 elections.
[97] HDP gained 11.7 % of the total votes cast in 2018 general election and won 67 MPs out of 600.
[98] ECtHR, *Herri Batasuna and Batasuna v. Spain* para. 86.
[99] Ibid. para. 85.
[100] ECtHR, *HADEP and Demir v. Turkey*, para. 68; *Democracy and Change Party and Others v. Turkey*, -para. 24; *Demokratik Kitle Partisi and Elçi v. Turkey*, para. 31; *DTP and Others v. Turkey*.
[101] ECtHR, *Yazar and Others v. Turkey*, para. 59; *HADEP and Demir v. Turkey.*

themselves constitute sufficient evidence to equate [their parties] with armed groups carrying out acts of violence".[102] Moreover, the Court has also reached similar findings in the case of *Selahattin Demirtaş v. Turkey (no. 2)* which directly concerns conduct forming the basis of the accusations against the HDP.[103]

66. Thirdly, in *Herri Batasuna and Batasuna*, the ECtHR found that the applicant political parties carried out "a series of serious and repeated acts and conduct, making it possible to conclude that there had been an accommodation with terror going against organised coexistence in the framework of a democratic State".[104] In the context of the dissolution of pro-Kurdish political parties in Turkey, the ECtHR has never identified such conduct which could justify the dissolution of a political party.

67. Fourthly, in *Herri Batasuna and Batasuna*, the ECtHR, taking into account their detailed study and the evidence, agreed with the reasoning of the Spanish Supreme Court that there was a link between the applicant parties and ETA, and that that link might objectively be considered to constitute a threat to democracy.[105] However, in the context of pro-Kurdish political parties in Turkey, given the absence of evidence showing that the political parties' conduct "[bore] a strong resemblance to explicit support for violence", it could not be argued that they posed a real and imminent threat to democracy.

68. Fifthly, in *Herri Batasuna and Batasuna*, the ECtHR held that the applicant political parties' calls for violence and support for the violent activities of ETA provided evidence that they contributed to a climate of social confrontation that "risked provoking intense reactions in society capable of disrupting public order, as has been the case in the past".[106] By contrast, the ECtHR has found that the conduct of dissolved pro-Kurdish political parties in Turkey had not contributed to a climate of social confrontation. Moreover, the ECtHR, in *Selahattin Demirtaş v. Turkey (no. 2)*, had very relevant and important findings regarding the accusations against the former HDP leader for his alleged role in the events of 6 to 8 October 2014 and the "trench events". Most notably, the ECtHR stated that Mr Demirtaş "[had] not call[ed] for the use of violent methods and his statements certainly [had] not amount[ed] to terrorist indoctrination, praise for the perpetrator of an attack, the denigration of victims of an attack, a call for funding for terrorist organisations or other similar behaviour".[107]

69. Lastly, as the ECtHR noted expressly in *DTP and Others v. Turkey*, in *Herri Batasuna and Batasuna* judicial dissolution of a political party was the only type of sanction provided for under Spanish law. However, under Turkish law instead of dissolving a political party permanently, the Constitutional Court might opt for a lesser sanction.

C. Standards the ECtHR developed in its application of Article 3 of Protocol no. 1 to the political party dissolution cases

70. Article 3 of Protocol no. 1 to the Convention guarantees right to free elections under the Convention. It enshrines a characteristic principle of democracy and it is of prime

[102] ECtHR, *HADEP and Demir v. Turkey*, para. 70.
[103] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2),* paras. 322-239.
[104] Ibid. para. 88.
[105] Ibid. para. 89.
[106] Ibid. para. 86.
[107] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2)*, para. 328.

importance in the Convention system.[108] This provision requires States parties to hold elections which ensure the free expression of the opinion of the people, but also implies individual rights, comprising the right to vote (the "active" aspect) and the right to stand for election (the "passive" aspect).[109] Moreover, the ECtHR has repeatedly found that Article 3 of Protocol no. 1 guarantees the individual's right to stand for election and, once elected, to sit as a member of parliament.[110]

71. The rights enshrined in Article 3 of Protocol No. 1 to the Convention are not absolute, as there is room for "implied limitations" and the Contracting States have a wide margin of appreciation in this sphere.[111] However, it is for the ECtHR to finally determine whether the requirements of Article 3 of Protocol No. 1 have been complied with.[112] Accordingly, the limitations imposed on the exercise of the rights under Article 3 of Protocol No. 1 must not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; they must be imposed in pursuit of a legitimate aim; and the means employed cannot be disproportionate.[113]

72. While the cases concerning the banning of political parties are usually examined under Article 11 of the Convention, Article 3 of Protocol No. 1 is considered as secondary and as not raising a separate issue.[114] However, in several cases, the ECtHR has examined the ancillary measures imposed on the MPs in relation to the dissolution of the political parties to which they belonged under this provision.[115] In those cases, while assessing the proportionality of the measures in question, the Court has considered that the nature and severity of the interferences are factors to be taken into account when assessing their proportionality. Notably, the Court found in *Sadak and Others v. Turkey (no. 2)*,[116] *Party for a Democratic Society (DTP) and Others v. Turkey*,[117] and *Sobacı v. Turkey*[118] that the applicants' forfeiture of their parliamentary seats following the dissolution of their political parties violated Article 3 Protocol No 1. The Court considered that the measure in question was extremely harsh, that it could not be regarded as proportionate to any legitimate aim. Accordingly, the measure was incompatible with the very substance of the applicants' right under Article 3 of Protocol No. 1 to be elected and to sit in parliament, and infringed the sovereign power of the electorate who had elected them as members of parliament.[119]

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[108] ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, App. no. 9267/81, 2 March 1987, para. 47.
[109] Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights: Right to free elections (31 December 2021), para. 18. See also *Mathieu-Mohin and Clerfayt v. Belgium*, paras. 48-51; *Ždanoka v. Latvia* [GC], App. no. 58278/00, 16 March 2006, para. 102.
[110] ECtHR, *Selahattin Demirtaş v. Turkey* (no. 2), para. 386; *Sadak and Others v. Turkey (no. 2)*, App. no. 25144/94, 11 June 2002, para 33; *Kavakçı v. Turkey*, no. 71907/01, 5 April 2007, para. 41.
[111] ECtHR, *Selahattin Demirtaş v. Turkey* (no. 2), para. 387.
[112] Ibid.
[113] Ibid.
[114] Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights, para. 57. See ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey [GC], 2003; Linkov v. the Czech Republic, 2006; Parti nationaliste basque – Organisation régionale d'Iparralde v. France,* 2007.
[115] ECtHR, *Sadak and Others v. Turkey (no. 2)*, 11 June 2002; *Kavakçı v. Turkey*, App. no. 71907/01, 5 April 2007; *Ilıcak v. Turkey*, App. No. 15394/02, 5 April 2007; *Sobacı v. Turkey*, App. No. 26733/02, 29 November 2007; *DTP and Others v. Turkey*.
[116] ECtHR, *Sadak and Others v. Turkey (no. 2)*, paras 27-40.
[117] ECtHR, *Party for a Democratic Society (DTP) and Others v. Turkey*, paras 112-127.
[118] ECtHR, *Sobacı v. Turkey,* paras 22-35.
[119] ECtHR, *Sadak and Others v. Turkey (no. 2)*, Paras 38-40

73. Moreover, in *Kavakçı v. Turkey*, the Court examined whether the temporary restrictions imposed on the applicant's political rights, i.e., the ban on her becoming founder member, ordinary member, leader or auditor of any other political party for five years, violated Article 3 Protocol No. 1. [120] The ECtHR held in particular that the constitutional provisions, in force at the relevant time,[121] concerning the temporary restrictions imposed on the applicant's political rights in connection with the dissolution of the political party to which she belonged had been very broad.[122] The Court noted that, at the time, all actions and statements by party members could have been imputed to the party for the purposes of finding the latter to be a centre of activities contrary to the Constitution and ordering its dissolution, and that no distinction had been made according to the degree of involvement of members in the activities in question.[123] As a result, underlining also that restricting political rights was a severe sanction, the Court considered that the sanction imposed on the applicant had not been proportionate to the legitimate aims pursued. [124]

74. It should be noted that as a result of the Constitutional amendment adopted in 2010, MPs do not automatically lose their parliamentary seats following the dissolution of their political party.[125] However, the text of the main provision of the Constitution concerning temporary restrictions on MPs' political rights was not altered in the Constitutional amendments of 2001 or 2010. Former Article 69 (6) and current Article 69 (9) of the Constitution states as follows:

> *"The members, including the founders of a political party whose acts or statements have caused the party to be dissolved permanently shall not be founders, members, directors or supervisors in any other party for a period of five years from the date of publication of the Constitutional Court's final decision with its justification for permanently dissolving the party in the Official Gazette."*

75. In his indictment against the HDP, the Chief Public Prosecutor requests a temporary political ban for 451 prominent members of the HDP, including its co-chairs, MPs, and members of its executive branches, based on this provision. The extent and severity of such restrictions and their impact on the rights guaranteed under Article 3 of Protocol No. 1 should be assessed by the Constitutional Court carefully taking into account the principles discussed above.

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[120] ECtHR, *Kavakçı v. Turkey*, para. 44.
In June 2001 the Constitutional Court dissolved *Fazilet Partisi* on the ground that the party, which had based its political programme in particular on the issue of wearing the Islamic headscarf, had become a centre of activities contrary to the constitutional principle of secularism. In arriving at its conclusion, the court took account of the actions and statements of the party's Chair and some of its leaders and members. The applicant was accused of making certain statements in public and of taking an oath before the National Assembly wearing an Islamic headscarf, at the instigation of members and leaders of the party.
[121] Article 68 (4), 69 (6) and (8) before the Constitutional amendment of 2001. See ECtHR, *Kavakçı v. Turkey,* para. 26.
[122] ECtHR, *Kavakçı v. Turkey*, para. 44.
[123] Ibid.
[124] Ibid. para. 45, See also ECtHR, *Sadak and Others*, para. 37.
[125] Article 84(5) of the Constitution was repealed on 12 September 2010.

D. Article 18 of the Convention and its application to cases in Turkey

76. Article 18 specifies the obligation on States not to restrict rights under the Convention for any purpose other than that for which they have been prescribed. While the Court has recognised under Article 11 that there might be valid reasons for restrictions on the freedom of association of political parties in exceptional circumstances, such restrictions may not be applied for any purpose other than those which they have been prescribed. In this connection, where there is a risk that a State is seeking to dissolve political parties in order to stifle pluralism and to limit freedom of political debate, which is at the very core of the concept of a democratic society, this may result in a violation of Article 18. While Article 18 can be applied in conjunction with both Article 10 and with Article 11 of the Convention,[126] under this provision, the Court "examines all the material before it irrespective of its origin"[127] to assess if restrictions serve an "ulterior purpose" contrary to the Convention's aims. Since *Merabishvili v. Georgia*[128] and *Navalnyy v. Russia,*[129] the Court no longer "applies the general presumption of good faith." It considers, inter alia, whether the case forms part of a pattern, evidenced by similar cases before the Court.[130]

77. In the context of Turkey, various factors are relevant to the pattern of which this case before the Constitutional Court forms part. In recent years, the ECtHR has delivered a number of judgments indicating that the national authorities have on a systematic basis adopted problematic practices targeting opposition figures, including HDP members and leaders. Moreover, several international bodies have also reported similar systematic practices in this regard. The NGOs submit that the following findings deserve the Constitutional Court's considered attention, having regard to the fact that the accusations against HDP members in the party dissolution case are directly or indirectly related with those.

1. The ECtHR's recent findings in the cases concerning HDP members

78. Firstly, the ECtHR in three different cases dealt with HDP politicians' complaints regarding the Constitutional amendment adopted on 20 May 2016, which lifted their parliamentary immunity.[131] In all of the cases, the Court found a violation of Article 10, on the ground that the interference with the exercise of the applicants' right to freedom of expression had not been "prescribed by law". In particular, the Court considered that the aim of the Constitutional amendment had been to limit the political speech of the members of parliament in question, and agreed with the Venice Commission that "this was a 'misuse of the constitutional amendment procedure'" and that "a member of parliament could not reasonably expect that such a procedure would be introduced during his term of office".[132] Moreover, in *Selahattin Demirtaş v Turkey (2)*, under Article 18, the Court noted how members of the National Assembly from the opposition parties were the only ones who had

[126] See for example the application with Article 10, *Miroslova Todorova v. Bulgaria*, App. no. 40072/13, 19 October 2021, and with Article 11, *Navalnyy v. Russia* [GC], App. nos. 29580/12 and four others, 15 November 2018.
[127] ECtHR Guide on Article 18 of the ECHR, 31 August 2020, p. 20.
[128] ECtHR, *Merabishvili v. Georgia* [GC], App. no. 72508/13, 28 November 2017, para. 310.
[129] ECtHR, *Navalnyy v. Russia* [GC]para.165
[130] Ibid. para. 223
[131] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2) Kerestecioğlu Demir v. Turkey*, App. No. 68136/16, 4 May 2021; *Encü and Others v. Turkey*, App. Nos. 56543/16 and 39 others, 1 February 2022.
[132] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2)*, para. 269.

been actually affected by the constitutional amendment in question.[133] Notably, fifty-five HDP members of parliament had been stripped of the parliamentary immunity they enjoyed under the second paragraph of Article 83 of the Constitution, and they had been detained and/or convicted as a result of criminal proceedings instituted against them.

79. Secondly, the Court underlined in its assessment under Article 18 in the *Selahattin Demirtaş* case that, along with Mr Demirtaş, a former co-chair of the HDP, a number of leading figures and elected mayors from the HDP had also been placed in pre-trial detention mainly for their political speeches.[134] Attaching considerable weight to the observations of the intervening third parties, and in particular the Commissioner for Human Rights, the Court considered that the decision on Mr Demirtaş's initial and continued pre-trial detention followed a certain pattern in using the national laws to silence dissenting voices.[135]

80. Thirdly, the ECtHR found under Article 18 that Mr Demirtaş, as co-chair of the second largest opposition party, had been targeted by the Turkish President and detained as a result of his political speeches concerning the Kurdish question.[136] The Court considered that "the judicial authorities [had] reacted harshly to the applicant's conduct as one of the leaders of the opposition, to the conduct of other HDP members of parliament and elected mayors, and to dissenting voices more generally".[137] The applicant's initial and continued pre-trial detention not only deprived thousands of voters of representation in the National Assembly, but also sent a dangerous message to the entire population, significantly reducing the scope of free democratic debate".[138]

81. The Court concluded that Mr Demirtaş's "detention, especially during two crucial campaigns relating to the referendum and the presidential election, pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society".[139] In this connection, it should be also noted that the Court considered different speeches and calls for which Mr Demirtaş had been accused of terrorism-related offences and had been placed in pre-trial detention, remained within the limits of political speech, as <u>they could not be construed as a call for violence, terrorist indoctrination, praise for the perpetrator of an attack, the denigration of victims of an attack, a call funding for terrorist organisations or other similar behaviour</u>.[140] Moreover, the applicant's participation in the Democratic Society Congress (*Demokratik Toplum Kongresi*) and the fact that he had given a speech there was also used as grounds for Mr Demirtaş's detention. The Court considered that the applicant Mr Demirtaş' acts in this respect were linked to the exercise of his rights under the Convention, in particular Articles 10 and 11.[141]

82. These three points show that HDP politicians have been specifically targeted with different measures which had been found to be in violation of their fundamental rights, in

[133] Ibid. para. 427.
[134] Ibid. para. 428.
[135] Ibid. para. 428.
[136] Ibid. para. 426.
[137] Ibid. Para. 436.
[138] Ibid. para. 436.
[139] Ibid. para. 437.
[140] Ibid. paras. 327, 328.
[141] Ibid. para. 329.

particular those protected under Articles 5, 10, 11 and Article 3 of Protocol no. 1 of the Convention. These measures taken by the domestic authorities display a pattern in which HDP politicians' rights guaranteed by the Convention have been restricted systematically for an ulterior purpose of stifling pluralism and limiting freedom of political debate.

83. Furthermore, in the case of *Selahattin Demirtaş*, the Court's assessment on Mr Demirtaş's speeches and activities, which had been prosecuted as terrorism-related offences, is of particular importance for the case before the Constitutional Court. In the case brought against the HDP before the Constitutional Court, the exact same accusations against Mr Demirtaş, or very similar ones against other HDP members, are among the grounds cited by the Chief Public Prosecutor in his requesting for the dissolution of the HDP.

2. The Government's systemic interference with the Turkish judiciary

84. The erosion of the independence and impartiality of the Turkish judiciary has been noted by a number of international bodies and civil society reports.[142] The ECtHR has also confirmed this phenomenon in the cases against Turkey. In its assessment on Article 18 of the Convention in *Selahattin Demirtaş v. Turkey (No. 2)*, the Court highlighted the problem and noted the findings of the Venice Commission and the Commissioner for Human Rights indicating that "the tense political climate in Turkey during recent years has created an environment capable of influencing certain decisions by the national courts, especially during the state of emergency, when hundreds of judges were dismissed, and especially in relation to criminal proceedings instituted against dissenters."[143]

85. Notably, the Court's findings under Article 18 in the cases of *Osman Kavala* and *Selahattin Demirtaş (no.2)* showed the links between the developments in the judicial proceedings and the executive, including public speeches from President Recep Tayyip Erdoğan.[144] The Court took into account *inter alia* this interference in finding a violation of Article 18 in conjunction with Article 5 of the Convention.

86. Moreover, in the *Selahattin Demirtaş* case, the Court noted in particular the Venice Commission's findings regarding the "extremely problematic" nature of the new composition of the Council of Judges and Prosecutors (*Hakimler ve Savcılar Kurulu*). Accordingly, out of thirteen members of the Council, the Minister of Justice is the

[142] See e.g., Third party intervention by the Council of Europe Commissioner for Human Rights in applications Abdullah Zeydan v. Turkey (no. 25453/17), Ayhan Bilgen v. Turkey (no. 41087/17), Besime Konca v. Turkey (no. 25445/17), Çağlar Demirel v. Turkey (no. 39732/17), Ferhat Encü v. Turkey (no. 25464/17), Figen Yüksekdağ Şenoğlu v. Turkey (no. 14332/17), Gülser Yıldırım v. Turkey (no. 31033/17), İdris Baluken v. Turkey (no. 24585/17), Nihat Akdoğan v. Turkey (no. 25462/17), Nursel Aydoğan v. Turkey (no. 36268/17), Selahattin Demirtaş v. Turkey (no. 14305/17), Selma Irmak v. Turkey (no. 25463/17), 2 November 2017, para. 20; Venice Commission, Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 , CDL-AD(2017)005-e, Venice, 10-11 March 2017, pp. 25-27; the EU European Commission, Commission Staff Working Document Turkey 2020 Report, 6 October 2020; International Commission of Jurist, Turkey's Judicial Reform Strategy and Judicial Independence, November 2019; Submission by Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, Additional Observations on the Implementation of Kavala v. Turkey (Application no. 28749/18) final judgment, 2 November 2020, paras 17-21.

[143] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2)*, para. 434.

[144] ECtHR, *Kavala v. Turkey*, App. No. 28749/18, paras. 229-230; *Selahattin Demirtaş v. Turkey (no. 2)* para. 426.

president, the Deputy Minister of Justice is a member, and four other members are appointed by the President of Turkey, while the remaining seven members are appointed by the National Assembly.[145] Considering that the President of Turkey who has the power to appoint six members of the Council is "not a neutral branch of power but belonged to a political faction", and his party has enjoyed a majority in Parliament, the composition of the Council seriously endangers the independence of the judiciary. Because the Council is "the main self-governing body of the judiciary, overseeing appointments, promotions, transfers, disciplinary measures and the dismissal of judges and public prosecutors" and "[g]etting control over [the Council] thus means getting control over judges and public prosecutors, especially in a country where the dismissal of judges has become frequent and where transfers of judges are a common practice".[146]

87. In addition to the serious systematic problems noted above, the dismissals of thousands of judges, including two Constitutional Court judges,[147] and detention of many in the aftermath of the attempted *coup d'etat* of 2016, also represent a clear interference with judicial independence. Notably, the ECtHR found in its rulings in the cases of *Alparslan Altan v. Turkey*, *Baş v. Turkey*, and *Turan and Others v. Turkey* that the pre-trial detention of the applicants, who were judges, lacked a legal basis (as an unreasonable extension of the concept of in *flagrante delicto*).[148]

3. The ongoing practice of using criminal law as a tool to further political purposes: silencing, deterring, and punishing

88. The prevention of terrorism is part of the positive human rights obligations of States to "ensure" respect for rights within their jurisdiction, as the ECtHR recalled in the *Beslan School Siege* case of 2017.[149] In appropriate circumstances the criminal law has a role to play in prevention, providing that the authorities respect international human rights law, and the fundamental constraining principles of criminal law inherent in a rule of law approach.

89. However, unfolding law and practice in Turkey stands in sharp contrast to these core principles. While the problem is longstanding, in the aftermath of the attempted *coup d'etat* of 15 July 2016, the widespread abuse of over-broad criminal legislation, and specifically anti-terror laws, has given rise to increased alarm internationally.[150] In particular, the inherent vagueness and breadth of many provisions of anti-terrorism criminal laws, and

[145] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2)*, para. 434.
[146] Ibid.
[147] Alparslan Altan and Erdal Tercan were dismissed by the decision of the Constitutional Court dated 4 August 2016.
[148] ECtHR, *Alparslan Altan v. Turkey*, App. no. 12778/17, 16 April 2019; *Baş v. Turkey*, App. no. 66448/17, 3 March 2020; *Turan and Others v. Turkey*, App no. 75805/16 and 426 others, 23 November 2021.
[149] ECtHR, *Tagayeva and Others v Russia*, App. No. 26562/07, 13 Apr. 2017.
[150] See e.g. Commissioner for Human Rights of the Council Europe, Report Following Her Visit to Turkey From 1 to 15 July 2019, CommDH(2020)1, 19 February 2020; Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January-December 2017, March 2018 https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf .

their expansive interpretation and widespread application by prosecutors and judges, have been severely criticised by international organisations.[151]

90. Firstly, as suggested by the ECtHR and other international bodies and experts, the definitions of certain crimes in Turkish anti-terrorism legislation fall short of the requirements of legality and foreseeability.[152] As discussed above, the ECtHR has held in a number of cases that some provisions of Turkey's anti-terror legislation, including Article 220(6) and (7) and Article 314(1) and (2) of the Criminal Code, fail to meet the legality standard under the Convention and are each widely used to criminalise the exercise of Convention rights.[153]

91. Secondly, far from adopting a restrictive interpretation of these broadly formulated laws, Turkish judicial practice suggests they have been broadly and loosely applied. The Grand Chamber in *Selahattin Demirtaş v. Turkey (No. 2)* held that the offences in Article 314(1) and (2) of the Criminal Code, namely forming, leading or membership of a terrorist organization, were overly broadly interpreted by domestic courts. The Court stressed that "the content of Article 314 […] coupled with its interpretation by the domestic courts, [did] not afford adequate protection against arbitrary interference by the national authorities"[154] and that "such a broad interpretation of a provision of criminal law cannot be justified where it entails equating the exercise of the right to freedom of expression with belonging to, forming or leading an armed terrorist organisation, in the absence of any concrete evidence of such a link." [155]

92. The result has been that this inherently problematic anti-terror legislation has been widely applied to punish a broad array of legitimate activity, including notably the expression of political dissent.[156] In this context, widespread pre-trial detention, prosecutions and convictions in the absence of evidence of material links with violent activity have been described by various experts as "judicial harassment" of government opponents or perceived opponents.[157]

93. In the aftermath of the coup attempt of 15 July 2016, the ECtHR ruled on a number of crucial cases that illustrate this expansive interpretation of anti-terrorism laws in Turkey and its impact on the legitimate activity of critical voices. Most notably, *Kavala v. Turkey* and *Selahattin Demirtaş v. Turkey (no. 2)*, concern the arbitrary pre-trial detention of

[151] UN Special Rapporteur on the right to freedom of opinion and expression, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his Mission to Turkey, A/HRC/35/22/Add.3, 21 June 2017, pp. 5-6; Venice Commission, Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, CDL-AD(2016)002,15 March 2016.
[152] Ibid.
[153] See e.g. ECtHR, *Işıkırık v Turkey*, App. no. 41226/09, 14 November 2017; *Bakır and Others v. Turkey*, App. no. 46713/10, 10 July 2018; *İmret v. Turkey (no. 2),* App. no.57316/10, 10 July 2018; and *Selahattin Demirtaş v. Turkey (no. 2)* .
[154] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2),* para. 337; See also Venice Commission Opinion, CDL-AD(2016)002 (n 151) pp. 26, 27.
[155] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2),* para. 280.
[156] Ibid. para. 280.
[157] The Commissioner for Human Rights of the Council of Europe, Memorandum on freedom of expression and media freedom in Turkey, CommDH(2017)5, Section II; Thomas Hammarberg and John Howell, Parliamentary Assembly of the Council of Europe (PACE) Report on the functioning of democratic institutions in Turkey, Doc. 15272, 21 April 2021, paras. 36, 42 and 52.

prominent critical voices similarly charged with terrorism-related offences.[158] Finding that Turkey had violated Article 18 of the Convention in conjunction with Article 5, the Court held that the applicants were detained and prosecuted for their legitimate activities protected under the Convention. The authorities had pursued an "ulterior purpose": in Kavala, of the silencing a human rights defender and in Demirtaş, of stifling pluralism and limiting freedom of political debate which is at the core of democratic society.[159] The Court's two judgments affirm the finding of the Commissioner of Human Rights that the situation reveals "a broader pattern of repression against those expressing dissent or criticism of the authorities, which is currently prevailing in Turkey".[160]

94. Furthermore, the Court found violations of Articles 5(1) and 10 of the Convention in the cases of journalists arbitrarily detained and prosecuted for alleged terrorism-related offences involving publications critical of the government.[161] These cases also concern the chilling effect on legitimate journalistic activities.[162]

95. Moreover, the lack of a rule of law approach to criminal law resulted in other problematic judicial practices and trends which have also targeted the opposition politicians. In particular, it is increasingly common for detention to be based exclusively on statements and acts that were manifestly non-violent, and in principle protected by ECHR Article 10. In addition to the blocking of opposition politicians from assuming office, members of the HDP in particular have been increasingly targeted with prosecutions and detentions for political expression.[163] Furthermore, parliamentarians are subject to possible immunity stripping for statements or publications allegedly falling under the amorphous scope of the anti-terror law and related crimes under the Criminal Code,

[158] ECtHR, *Kavala v. Turkey*, App. no. 28749/18; 10 December 2019; ECtHR, *Selahattin Demirtaş v. Turkey (no. 2).*

[159] ECtHR, *Kavala v. Turkey*, para. 232*; Selahattin Demirtaş v. Turkey (no. 2)* para. 437.

[160] Third party intervention by the Council of Europe Commissioner for Human Rights in the cases of Ahmet Hüsrev Altan v. Turkey (no. 13252/17), Alpay v. Turkey (no. 16538/17), Atilla Taş v. Turkey (no. 72/17), Bulaç v. Turkey (no. 25939/17), Ilıcak v. Turkey (no. 1210/17), Mehmet Hasan Altan v. Turkey (no. 13237/17), Murat Aksoy v. Turkey (no. 80/17), Sabuncu and Others v. Turkey (no. 23199/17), Şık v. Turkey (no. 36493/17), Yücel v. Turkey (no. 27684/17), 10 October 2017, para. 44;
third party intervention by the Council of Europe Commissioner for Human Rights in the case of Kavala v. Turkey (App. No. 28749/18) para. 44; third party intervention by the Council of Europe Commissioner for Human Rights in applications Abdullah Zeydan v. Turkey (no. 25453/17) and other applications (n 147), paras 18 and 23;
see also, the EU European Commission, Commission Staff Working Document Turkey 2020 Report, 6 October 2020.

[161] The accusations included: -belonging to a terrorist organisation (Article 314 of the Criminal Code); attempting, by force or violence, to overthrow the government (Article 312 of the Criminal Code) -attempting, by force or violence, to overthrow the constitutional order (Article 309 of the Criminal Code) -attempting, by force or violence, to overthrow the Turkish Grand National Assembly (Article 311 of the Criminal Code) - committing an offence on behalf of an illegal organisation without being a member of that organisation (Article 220(6) of the Criminal Code) - assisting terrorist organisations without being a member of them (Article 220(7) of the Criminal Code).

[162] ECtHR, *Işıkırık v Turkey*; *Bakır and Others v. Turkey*; *İmret v. Turkey (no. 2)*; Mehmet Hasan Altan v. Turkey, App. no. 13237/17, 20 March 2018; *Şahin Alpay v. Turkey*, App. no. 16538/17, 20 March 2018; *Sabuncu and Others v. Turkey*, App. no. 23199/17, 10 November 2020; *Şık v. Turkey (no. 2),* App. no. 36493/17, 24 November 2020; *Atilla Taş v. Turkey*, App. no. 72/17, 19 January 2021; *Ahmet Hüsrev Altan v. Turkey*, App. no. 13252/17, 13 April 2021; *Murat Aksoy v. Turkey*, App. no. 80/17, 13 April 2021.

[163] ECtHR, *Selahattin Demirtaş v. Turkey* (no. 2) para 427.

impeding the exercise of their democratic functions.[164] Practice shows a pattern of systematic failure on the part of Turkish prosecutors and courts to perform an appropriate analysis of the facts of cases in the light of the Court's well-established case-law under Article 10.[165]

96. Lastly, examples show that the domestic courts have recurrently reclassified substantially the same facts as new crimes to justify ongoing detention. This has been seen, for example, in the cases of *Kavala v. Turkey*, *Atilla Taş v. Turkey*[166] and *Selahattin Demirtaş v. Turkey (no. 2)*.[167] Repeatedly using such a method as a means to bypass judicial decisions, nationally or by the ECtHR, or to prevent individuals from securing the effective protection of the law and the opportunity for release, amounts to a form of arbitrariness and abuse of process.[168]

97. In the light of the context described above, the NGOs submit that, in Turkey, criminal law is used to impede the exercise of Convention-protected rights, such as freedom of expression, the right to be elected and to sit in parliament, and freedom of association, against those expressing dissent or criticism of the authorities. The Constitutional Court should assess the reliance of the Chief Public Prosecutor on such proceedings in light of the context described above.

V. The Constitutional Court's duty to implement the judgments of the ECtHR relevant to the case before it

98. The ECHR and the ICCPR are international human right treaties that have been ratified by Turkey and incorporated into domestic law. In connection with the ECHR, final judgments of the ECtHR are binding on Turkey in terms of individual and general measures. Moreover, it should be also noted that, in the case of a conflict between the provisions of these human rights treaties and domestic laws, the former prevails over the latter in accordance with Article 90(5) of the Constitution.[169] Accordingly, the Constitutional Court while ruling on the matters concerning fundamental rights should take into account the ECtHR's judgments against Turkey. Thus, pursuant to Article 46(1) of the

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[164] Thomas Hammarberg and John Howell, Parliamentary Assembly of the Council of Europe (PACE) Report on the functioning of democratic institutions in Turkey (n 162) , para 13.
[165] Commissioner for Human Rights of the Council Europe, Report Following Her Visit to Turkey From 1 to 15 July 2019, CommDH(2020)1, 19 February 2020, para. 52.
[166] ECtHR, *Atilla Taş v. Turkey*.
[167] Submission by Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, Additional Observations on the Implementation of Osman Kavala v. Turkey (Application no. 28749/18) final judgment, 7 February 2021, paras. 25-26, https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/603d17ae7b5a401e70fb4aed/1614616511653/Rule+9.2+K avala+v.+Turkey+by+HRW+ICJ+and+TLSP.pdf .
[168] Submission by ARTICLE 19, Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, and the Turkey Human Rights Litigation Support Project pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments providing initial observations on the implementation of *Selahattin Demirtaş v. Turkey (No.2)* (Application no. 14305/17) Grand Chamber judgment, 18 February 2021, paras. 59-63, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a1747c.
[169] Article 90(5) of the Constitution: "In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

ECHR, the Constitutional Court is among the judicial institutions obliged to execute relevant judgments of the ECtHR by concluding the cases before it in line with the latter's findings.

99. As noted in the previous subsection, the ECtHR has delivered important rulings in recent years that are directly or indirectly relevant to the lawsuit brought against the HDP before the Constitutional Court. The first group of these rulings concerns the lifting of immunities of the HDP MPs including the pre-trial detention and criminal prosecution of the former co-chair of the party, Selahattin Demirtaş and a number of other politicians.[170] The ECtHR's finding of violations in these cases are closely related to the present case before the Constitutional Court, considering that the indictment cites criminal proceedings concerning the HDP MPs that had been initiated following the lifting of immunities, and the same or similar accusations against Mr Demirtaş, Ms Kerestecioğlu, Mr Encü and a number of other applicants. All these judgments are still under the supervision of the Committee of Ministers and pending implementation by the Turkish authorities.

100. In its decision adopted in its 1419th meeting between 30 November and 2 December 2021, the Committee of Ministers underlined the ECtHR's findings in *Selahattin Demirtaş v. Turkey* (no. 2) as regards the freedom of political debate, and "invited the authorities to take necessary measures that are capable of strengthening freedom of political debate, pluralism, and the freedom of expression of elected representatives, especially of members of the opposition". Moreover, the Committee noted the need to take measures to ensure adequate protection against the arbitrary application of Article 314 of the Criminal Code.[171] The NGOs submit that allowing the request of the Chief Public Prosecutor for the closure of the HDP would go against the findings of the Court in numerous relevant cases discussed in this submission as well as the decisions of the Committee of Ministers.

101. The second relevant group of judgments pending for implementation by Turkey concerns the broadly formulated criminal law - in particular anti-terror legislation - and the expansive interpretation of it to punish a broad array of legitimate activities, including the expression of political dissent.[172] These cases are also related with the present case before the Constitutional Court because they reveal the domestic authorities' practice of using criminal law against political dissent, including HDP members. While assessing the accusations against HDP members in the indictment against HDP, the criminal law and domestic practices which were found in breach of the Convention by the ECtHR, and which still form the basis of the request for dissolution, should be taken into account by the Constitutional Court.

102. In a third group of cases which similarly concerns unjustified and disproportionate interferences with the right to freedom of expression on account of criminal proceedings initiated against applicants under various articles of the Criminal Code or Anti-Terrorism Law, the Committee of Ministers stated as follows:

> *"It is recalled that the problem of the disproportionate application of the criminal law in Turkey against journalists and other persons who express*

[170] ECtHR, *Selahattin Demirtaş v. Turkey (no. 2)*; *Kerestecioğlu Demir v. TurkeyEncü and Others v. Turkey.*
[171] Commitee of Ministers of the Council of Europe, 1419th meeting, 30 November – 2 December 2021 (DH), H46-39 Selahattín Demírtaş v. Turkey (Application No. 14305/17), https://hudoc.exec.coe.int/eng?i=004-56539.
[172] ECtHR, *Mehmet Hasan Altan v. Turkey*; *Şahin Alpay v. Turkey*; *Sabuncu and Others v. Turkey*; *Şık v. Turkey (no. 2)*, App. no. 36493/17; *Atilla Taş v. Turkey*; *Ahmet Hüsrev Altan v. Turkey*; *Murat Aksoy v. Turkey*.

critical or unpopular opinions has been pending before the Committee in relation to various judgments for over 20 years. Certain provisions of Turkish legislation, in particular of the Criminal Code and the Anti-Terrorism Law, and their broad interpretation and application by prosecutors and judges run counter to the Convention values and the Court's findings. Systemic problems in the interpretation and application of such provisions by prosecutors and judges have consistently resulted in violations of the Convention on account of breaches of the right to freedom of expression in Turkey."[173]

103. It should be noted that the ECtHR judgments that have been cited under this part of the submission have still not been fully implemented by the domestic authorities.[174] Non-implementation of ECtHR judgments means that problematic practices are not ended, and consequences of violations are not remedied by the authorities. This has been recently stressed by the Parliamentary Assembly of the Council of Europe in a resolution adopted on 22 April 2021.[175] Indeed, since the ECtHR ruled in the case of *Selahattin Demirtaş v. Turkey (no. 2)* in December 2020, the Turkish authorities have continued to target opposition parliamentarians by arbitrary criminal procedures, and parliamentarians from the HDP are disproportionately targeted.[176] Thus the Chief Public Prosecutor's request for the dissolution of the HDP relies on such proceedings which have been repeatedly found by the ECtHR to be conducted in violation of Convention standards.

104. The NGOs submit that these important ECtHR judgments and the findings of the Court that are relevant to the case before the Constitutional Court must form the basis for the Constitutional Court's decision in recognition of its role in ensuring Turkey's compliance with its obligation to implement ECtHR judgments.

[173] Committee of Ministers of the Council of Europe, 1406th meeting, 7-9 June 2021 (DH), H46-35 Öner and Türk group (Application No. 51962/12), Nedim Şener group (Application No. 38270/11), Altuğ Taner Akçam group (Application No. 27520/07) and Artun and Güvener group (Application No. 75510/01) v. Turkey, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a29b7e..
[174] See ECtHR judgments listed in (n 170) and (n 172).
[175] The Parliamentary Assembly of the Council of Europe (PACE), the Functioning of Democratic Institutions in Turkey, Resolution 2376 (2021), para. 14 (Turkey has been under the parliamentary monitory procedure of the PACE since April 2017).
[176] Ibid., para 9; Hammarberg and Howell, PACE Report on the functioning of democratic institutions in Turkey (n162) para. 8.