

Political Parties and Human Rights in Europe: an Appraisal

As a European, I have often focused on the system of political representation in Europe. In our contemporary European history, over fifteen political parties have been dissolved, prohibited, or have been refused to register as a political party¹. In this paper, I shall provide a brief analysis about the protection interaction of political parties within the European spectrum, particularly seen from a human rights point of view, thereby providing a panorama for those that are less familiar with this phenomenon on this side of the ocean.

Specifically, I shall first provide a general overview of the concept and interaction between political parties and human rights. This is then followed by the main protective legal mechanisms in place at the European level that offer protection to political parties, seen from a Human Rights point of view, specifically Article 11 of the European Convention on Human Rights ("ECHR"). Finally, a brief overview is presented of the exact human rights legal parameters in place that the European Court of Human Rights ("ECtHR") takes into account whilst assessing whether the prohibition of a political party is permitted under the ECHR.

At the European level, the European Commission for Democracy Through Law ("Venice Commission") defines a political party as

"a free association of persons, one of the aims of which is to express the political will of citizens including through participation in the management of public affairs and the presentation of candidates to free and democratic elections."² As such, this freedom of association is a central right, which governs the functioning of political parties, and is protected by Article 11 ECHR, which states in part that: "[e]veryone has the right to freedom of peaceful assembly and to freedom of association with others (...)."³

However, Article 11 ECHR-rights are not absolute, and allows for possible exceptions. Specifically, Article 11 (2) ECHR states that: "[n]o restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others (italics added)."⁴

The above entails a two-fold assumption: the first pertains to the fact that the general rule of thumb is that the ECHR protects political parties and, secondly, even if an interference

¹Ver la Corte Europea de Derechos Humanos, Factsheet – Political parties and associations, Octubre 2016.

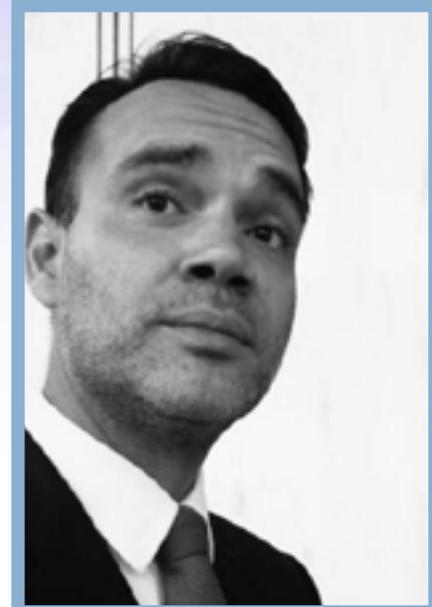
²Comisión Europea para la Democracia a través de la Ley (Comisión de Venecia), Compilación de Opiniones de la Comisión de Venecia y Reportes con respecto a Partidos Políticos, 15 de marzo 2016, página 7.

³ Artículo 11 (1) CEDH.

is warranted, this interference is strictly limited; the ultimate guardian thereof being the ECtHR, and its assessment, throughout its jurisprudence, shall consider three main steps.

The first step is a simple assessment of the factual situation of whether an interference took place, i.e., did a State actually interfere with a political party, by for example prohibiting it? Secondly, once this factual situation has been observed, the next step is to analyse whether the justifications for interference provided for in the ECHR are present. The first justification is whether the conduct was prescribed by law. Lawfulness implies another dual condition in that the interference was not only made with reference to law, but also that the law is both natural and foreseeable, which is commonly known as a legal principle throughout all legal systems.⁵

The main criterion here is whether the dissolution was unlawful, i.e., whether or not a legal basis for the dissolution existed. If this is not the case, an immediate violation of Article 11 ECHR is in order, as has happened for example in the Case of Communist Party of Russia and Others v. Russia.⁶ However, these first two criteria generally do not lead to large legal contentions, because most States do have some form of legal basis pertaining to criteria under which a political party can be prohibited. What makes it more complicated is the third and final factor, which focuses on the question whether prohibiting a political party was necessary in a democratic society, and this is where matters become more complicated, as the question what is necessary in a democratic society can be left open for debate.



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For example, one of the first and most important cases before the ECtHR was the case known as the United Communist Party of Turkey v. Turkey-case⁷ (“UCPT”), a case in which the Turkish Constitutional Court dissolved the UCPT as well as consequently banned its leaders from holding political office in other political parties – as established under Turkish Law. Applying the three criteria to this case, the first two criteria were simple tests: the prohibition of the UCPT was an interference and it was in accordance with Turkish Law. However, the main matter of contestation was the third and final criterion. In this case, the Turkish reasoning was that the UCPT had the word communist in its name and that the UCPT Constitution mentioned the Kurdish minority, two issues that conflicted with provisions within the Turkish Constitution.

⁴Artículo 11 (2) CEDH.

⁵Molenaar, F., Party Law in Modern Europe The Legal Regulation of Political Parties, The Development of European Standards on Political Parties and their Regulation, Working Paper 4, Febrero 2010, página 9.

⁶Ver el Case of Communist Party of Russia and Others v. Russia, First Instance Decision, número de aplicación 29400/05, 19 de junio 2012.

⁷Ver el Case of the United Communist Party of Turkey and Others v. Turkey, Grand Chamber Judgement, número de aplicación 19392/92, 30 de enero 1998.

The ECtHR ruled that the dissolution of the UCPT was disproportionate mainly because of the important role that political parties play in a democratic society; a State only has a limited margin of appreciation when determining the necessity to restrict the right to freedom of association. Just because a political party has the word communist, or emphasises issues that a minority group faces – as opposed to a majority group – does not entail it should be prohibited. In the words of the ECtHR, a political group may seek “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.”⁸

Besides the above-mentioned, the ECtHR, in the Socialist Party v. Turkey-case⁹, supplemented and further built upon the criteria of the UCPT-case, mentioning that an infringement on Article 11 ECHR-rights would only be “necessary” when it meets a “pressing social need” and when it is “proportionate to the aim pursued”.¹⁰ In this sense, for a political party to play within the rules, and hence be protected by Article 11 ECHR, it may challenge the basic ideology and constitutional structure of the State under certain conditions, as long as: “(1) the means used to that end must in every respect be legal and democratic; (2) the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite recourse to violence, or propose a policy which does not comply with one or more of the rules of democracy or is aimed at the

destruction of democracy and infringement of the rights and freedoms afforded under democracy cannot lay claim to the protection of the Convention (...).”¹¹

The final question then focuses on what a pressing social need entails. In the Refah Partisi (Welfare Party) and Others v. Turkey-case¹², the prohibition of this political party was considered to not have violated Article 11 ECHR, mainly because this political party aimed to introduce Sharia-law in Turkey, an element that would be “incompatible with the fundamental principles of democracy.”¹³ In this sense, three main elements must be taken into account in assessing such an incompatibility, whether there is plausible evidence that the risk to democracy was sufficiently imminent; whether the acts and speeches of the political leaders were imputable to the party as a whole; and, finally, whether the acts and speeches of such a political party formed a whole which would give a clear picture of a model of society advocated by the party which was incompatible with the concept of a democratic society.¹⁴

In conclusion, political parties are in a sense a manifestation of the will of the people. The idea behind is that every individual, within a pluralist democratic society has a means for their voice to be heard. Therefore, to prohibit political parties, just because they may not spread the same voice as you, can only be achieved under very strict parameters.

⁸Case of the United Communist Party of Turkey and Others v. Turkey, para. 57.

⁹Case of the Socialist Party of Turkey (STP) v. Turkey, Court (Second Section), número de aplicación 26482/95, 12 de noviembre 2003.

¹⁰Case of the Socialist Party of Turkey (STP) v. Turkey, para. 49.

¹¹Case of the Socialist Party of Turkey (STP) v. Turkey, paras. 46 – 47.

¹²Case of Refah Partisi (The Welfare Party) and Others v. Turkey, Grand Chamber Judgement, números de aplicación 41340/98, 41342/98, 41343/98, 41344/98, 13 de febrero 2003.

¹³Case of Refah Partisi (The Welfare Party) and Others v. Turkey, para. 123.

Overall, there have been many issues throughout the ECtHR-case law that have focused on the interaction between the exact legal parameters of the interaction of political parties within a democratic context, and the above-mentioned is just a mere snippet of the total amount of cases brought before the ECtHR. What can be said, however, is that the protective human rights principles applicable to such cases is both vast and very restrictive.

Prohibiting political parties in Europe is almost impossible, safe in certain extreme circumstances either where groups incite to commit violence or where the intention is to dismantle the pluralist aspects and the fundamental freedoms of the individuals upon which democratic societies are built.

I would like to invite the readers to ponder upon these issues within the context of both Mexico and Latin America as a whole, and to wonder whether any cases exist within this geographic region that, if applicable, would fall within these legal parameters. 

⁸Case of the United Communist Party of Turkey and Others v. Turkey, para. 57.

¹⁴Case of Refah Partisi (The Welfare Party) and Others v. Turkey, para. 104.