



Law governing the inspection of political parties' expenditure was unclear

In today's **Chamber judgment**¹ in the case of **Cumhuriyet Halk Partisi v. Turkey** (application no. 19920/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the confiscation of a substantial part of the assets of Turkey's main opposition party, Cumhuriyet Halk Partisi, by the Constitutional Court following an inspection of its accounts for the years 2007 to 2009.

The Court found that requiring political parties to subject their finances to official inspection did not in itself raise an issue under Article 11, as it served the goals of transparency and accountability, thus ensuring public confidence in the political process. The Court stressed however that, having regard to the important role played by political parties in democratic societies, any legal regulations which might have the effect of interfering with their freedom of association, such as the inspection of their expenditure, had to be couched in terms that provided a reasonable indication as to how those provisions would be interpreted and applied. In Cumhuriyet Halk Partisi's case, the scope of the notion of unlawful expenditure under the relevant legal provisions in force at the time as well as the applicable sanctions for unlawful expenditure had, however, been ambiguous.

Principal facts

The applicant party, Cumhuriyet Halk Partisi (the People's Republican Party), is a Turkish political party of the opposition, based in Ankara.

In keeping with its requirement under the Constitution, the party submitted the consolidated final accounts of its headquarters and local branches for the years 2007 to 2009 to the Constitutional Court for inspection. In March and July 2012 that court issued its decisions regarding those accounts. While holding that the income and expenses were financially accurate and that the income had been mostly in compliance with the applicable rules under the Political Parties Act, the court found that certain expenses incurred in the periods under review had been in violation of that Act.

Expenses that were found to be unlawful fell under two groups. The first group concerned expenses which had not been made "in pursuance of the party's objectives" and "in the name of the party's legal personality" on the basis of a decision of the competent party organ in accordance with section 70 of the Political Parties Act. The second group concerned the expenses that had not been substantiated with the necessary documents as required under section 76 of the relevant Act.

The Constitutional Court accordingly ordered the confiscation of the party's assets in the amounts corresponding to the expenditure considered to be unlawful for each year under review, in total the equivalent of over three million euros (EUR). It also issued warnings in relation to certain expenses. The payments due in relation to the 2007 accounts were eventually deducted from the State funding

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

allocated to the party for the year 2013, and the party eventually paid to the State Treasury the amounts due in relation to the 2008 and 2009 accounts.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the party complained that the confiscation orders issued by the Constitutional Court had put a substantial financial strain on its political activities. The party notably complained about the authorities' failure to provide at the relevant time for a clear, foreseeable and predictable basis in law making it possible, firstly, to determine in advance the kinds of expenditure which fell within the scope of "unlawful expenditure" and, secondly, to anticipate the circumstances in which the Constitutional Court would issue a warning, rather than a confiscation order, in response to a financial irregularity.

The party also alleged violations of Article 6 § 1 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property), complaining in particular about the excessive length of the proceedings concerning their case and a breach of their property rights.

The application was lodged with the European Court of Human Rights on 16 March 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Julia **Laffranque** (Estonia), *President*,
İşıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),
Jon Fridrik **Kjølbro** (Denmark),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The Court declared inadmissible the complaint as regards the inspection of the applicant party's 2007 accounts, for being lodged out of time².

In the first place, the Court observed that requiring political parties to subject their finances to official inspection did not in itself raise an issue under Article 11. Such requirement served the goals of transparency and accountability, thus ensuring public confidence in the political process. Moreover, member States had relatively wide room for manoeuvre ("margin of appreciation") in inspecting political parties' finances and choosing sanctions for irregular financial transactions.

However, the Court noted that the confiscation orders as regards the applicant party's 2008 and 2009 accounts had obliged the applicant party to curtail a significant number of its political activities, particularly at local branch level. The confiscation orders had therefore interfered with the applicant party's right to freedom of association.

Although, formally, that interference had had a basis in national law (namely, under Article 69 § 3 of the Constitution and sections 70-76 of the Political Parties Act), the Court found that the relevant legal provisions in force at the time³ lacked precision as regards the scope of the notion of unlawful expenditure. Nor had the Government presented any established case-law where the manner and scope of the Constitutional Court's review and its interpretation of the relevant lawfulness

² For an application to be admissible it has to be lodged within six months following the last judicial decision in the case.

³ Amendments to the relevant provisions of the Political Parties Act were introduced in 2011 aiming to bring clarity to the political parties' entitlements and obligations regarding their expenditure.

requirements gave reason to anticipate a finding of unlawfulness in relation to the applicant party's expenditure at issue. The Court noted in addition that the Constitutional Court decisions against the applicant party had also suffered from some inconsistencies as to the criteria to be applied in the assessment of the lawfulness requirements. For instance, the applicant party's explanation that dinners organised in 2008 by the head of its youth branch had concerned election work was accepted in relation to two of those meals, and rejected for the rest, without justification.

There resulted an inconsistent and unpredictable interpretation and application of the law to the detriment of the applicant party's need to be able to regulate its expenditure in order to avoid facing sanctions in the future. That legal uncertainty had also been exacerbated by the delays the applicant party encountered in the inspection procedure, it having taken the Constitutional Court three years to finalise its inspection of the 2008 accounts and two years for the 2009 accounts.

Nor could the applicant party foresee whether and when expenditure would be sanctioned with a warning or a confiscation order. By way of example, the Constitutional Court issued a warning for the applicant party's failure to support the payment orders in relation to employees' salaries with bank statements, whereas submission of payment orders alone in relation to some other expenses had met with confiscation orders.

The Court accepted that the broad spectrum of activities undertaken by political parties in modern societies made it difficult to provide comprehensive criteria to determine those activities which might be considered to be in keeping with the objectives of a political party and those which relate genuinely to party work. It stressed, however, that having regard to the important role played by political parties in democratic societies, any legal regulations which might have the effect of interfering with their freedom of association, such as the inspection of their expenditure, had to be couched in terms that provided a reasonable indication as to how those provisions would be interpreted and applied.

Having regard to the ambiguity of both the scope of the notion of unlawful expenditure under the relevant legal provisions in force at the time as well as the applicable sanctions for unlawful expenditure, the Court concluded that the high standard of foreseeability required as regards laws that govern the inspection of the finances of political parties had not been satisfied in the applicant party's case. Accordingly, the confiscation orders had not been "prescribed by law", in breach of Article 11.

Given the above findings, the Court considered that it was not necessary to examine the applicant party's complaints under Article 6 § 1 and Article 1 of Protocol No. 1 separately.

Article 41 (just satisfaction)

The Court held that Turkey was to pay the applicant party 1,085,800 euros (EUR) in respect of pecuniary damage and EUR 5,000 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.