LIMITING/DISSOLVING POLITICAL PARTIES DUE TO TERRORISM: NATIONAL RESPONSES OF THE UK, SPAIN, AND TURKEY UNDER THE REVIEW OF THE ECtHR

Terörizm Gerekçesiyle Siyasi Partilerin Kapatılması/Sınırlandırılması: AİHM İncelemesi Işığında Birleşik Krallık, İspanya ve Türkiye'nin Tedbirleri

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ABSTRACT

Political parties are the main players in a democratic system with a multi-party system. The fundamental principles of democracy consist of free election, the right of criticism, and the right to organise political opposition. However, democracy provides available ground for party politics to abuse or misuse democratic institutions and procedures to harm or overturn democracy. In some cases, political parties aim to replace a democratic regime with their non-democratic ideology. For instance, a political party advocates violence or aims to overthrow the existing constitutional order through armed struggle, terrorism, or subversive activity. So, political parties might also play a role in causes of terrorism. From past to present, many examples can be founded that political parties have involved in or created terrorist organisations, based on different types of relationships. National authorities have adopted measures against such relationships through restricting or dissolving political parties. The United Kingdom, Spain and Turkey are some of these countries that have developed different approaches to interfere with the linkage between political parties and terrorist organisations (the Irish Republican Army (IRA), Basque Homeland and Freedom (ETA) and Kurdistan Workers' Party (PKK)), within the democratic system. This study analyses the legal framework established by these countries and the European Court of Human Rights against such linkages.

Key Words: Limiting/Dissolving Political Parties, Terrorism, the ECtHR

ÖZET

Siyasi partiler temel ilkeleri özgür seçim, eleştiri hakkı ve siyasi muhalefetin örgütlenme hakkı olan demokrasinin ana oyuncularıdır. Fakat bununla birlikte, demokrasi, demokratik kurum ve prosedürleri suiistimal ederek veya kötüye kullanarak demokrasiye zarar vermeyi veya devirmeyi amaçlayan siyasi partiler için uygun zeminde sağlamaktadır. Bazı durumlarda, siyasi partiler demokratik bir rejimi demokratik olmayan ideolojileriyle değiştirmeyi amaçlamaktadır. Buna özellikle, şiddeti, silahlı mücadele, terörizm veya yıkıcı faaliyetler

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yoluyla mevcut anayasal düzeni devirmeyi amaçlayan siyasi partiler dahildir. Dolayısıyla siyasi partiler terörün sebeplerinde de rol oynayabilirler. Geçmişten günümüze siyasi partilerin farklı ilişki biçimlerine dayalı olarak terör örgütlerine dahil oldukları veya oluşturdukları birçok örnek bulunmaktadır. Ulusal makamlar, siyasi partileri sınırlayarak veya kapatarak bu tür ilişkilere karşı önlemler almıştır. Birleşik Krallık, İspanya ve Türkiye demokratik sistem içerisinde siyasi partiler ve terör örgütleri (İrlanda Cumhuriyet Ordusu (IRA), Bask Yurdu ve Özgürlük (ETA) ve Kürdistan İşçi Partisi (PKK)) arasındaki bağlantıya yönelik olarak farklı yaklaşımlar geliştiren örnek ülkelerdir. Bu çalışma söz konusu ülkelerin ve Avrupa İnsan Hakları Mahkemesinin bu tür bağlantılara karşı oluşturduğu yasal çerçeveyi ele almaktadır.

Anahtar Sözcükler: Siyasi Partilerin Kapatılması/Sınırlandırılması, Terörizm, AİHM

INTRODUCTION

Global recognition of democracy has been achieved since 1950s as the best way of forming a government to rule a country. Democratic states and societies which provide rights to frame their association to fulfill common aims with the freedom to participate or not, to associations such as trade unions, religious association, political parties, and any many other associations have been assured under their constitutions.[1] The main political players in a democratic system are the political parties and their activities based on a multi-party system. In a democratic society, public debate must be widespread and political parties should be free to discuss the country's issues without interference.

The freedom of association has not only the democratic meaning, but also it might be restricted for the reason of the irresponsible and dangerous exploitation of democracy by violent nature.[2] In a democratic system, political parties have some limits in their activities. Political parties possess the right to advocate changing politics, constitution, and the law of the country, but to what extent do they have these rights? For example, their rights such as changing laws cannot be fully illegal and anti-democratic.[3]

Dissolving a political party not for any reason to do with criminal activities but for their ends and methods is incompatible with democracy. More strikingly, restricting or dissolving a political party might be seen as a way of protecting the democratic system against associations that have undemocratic aims or advocate the use of violence.[4] In this study, political parties are considered as a prerequisite for democracy, but they are also considered as actors that may play a role in

1 White, Jacobs and Ovey, The European Convention on Human Rights, (Fifth ed., OUP 2010)

2 Jean-Francois Flauss, `The European Court of Human Rights and the Freedom of Expression` (2009) 84 Indian Law Journal 809, 810

3 Leslie Turano, `Spain: Banning Political Parties as a response to Basque Terrorism` (2003) 1 INT'L J.CONST. L. 730, 736

4 Kapani Munci, Kamu Hurriyetleri, (Ankara Universitesi Hukuk Fakultesi Yayini 1981) 192-193; See Erdogan Teziç, `100 Soruda Siyasi Partiler` (Gercek Yayinevi, Istanbul 1976) 131-133.

causes of terrorism. From past to present, there are many examples that political parties have involved in or created terrorist organisations, based on different types of relationship. National authorities have responded to such relationships through restricting or dissolving political parties. Here interfering political parties due to terrorism has been the case in the United Kingdom, Spain, and Turkey that will be analysed. These countries have developed different approaches responding to the linkage between political parties and terrorist organisations such as the Irish Republican Army (IRA), Basque Homeland and Freedom (ETA) and Kurdistan Workers' Party (PKK), respectively, with restrictions on and dissolution of political parties. The European Court of Human Rights (hereinafter the ECtHR) reviewed their responses in the scope of the European Convention on Human Rights (hereinafter the Convention).

I. RESTRICTING/DISSOLVING POLITICAL PARTIES IN DEMOCRACIES

Democracy is described as an open and never-ending process in which the freedom of all citizens should be accomplished.[5] The fundamental principles of democracy consist of free election, the right of criticism, and the right to organize political opposition.[6] Teziç defines 'political parties' as a constant formation intends to obtain and utilize the political competence and struggles to ensure the support of the people in this regard.[7] Katz states that political parties play two main roles that, they perform the function of interest articulation through their manifestos and propaganda.[8] First, they act as 'speakers' of themselves, citizens, and other interest articulators. They voice up or facilitate desires, demands, aspirations, fears, or expression of citizens and any social, economic, cultural organizations. Second, they perform the function of interest aggregation and then being held accountable, as the agents of the electorate in the process of governing.

However, the characteristic of democracy provides available ground for the activities of groups and individuals who want to harm or overturn democracy by abusing or misusing democratic institutions and procedures such as free elections, freedom of speech, and freedom of association. Political parties

5 Resolution 1547, 'State of Human Rights and Democracy in Europe', adopted by the Assembly on 18 April 2007 (15th Sitting), para. 42.

6 Jure Vidmar, `Multiparty Democracy: International and European Human Rights Law Perspective` (2010) 23 Leiden Journal of International Law 209-240

7 Erdogan Teziç, Anayasa Hukuku (20. Baskı Beta 2016) 375; There are different definitions for political parties. See also, Ensar Yılmaz, `Sociology of Political Parties' Closure Regime` (2009) 3 African Journal of Business Management 831, 831

8 Richard S. Katz, 'Democracy, and the Legal Regulation of Political Parties', in Ingrid van Biezen & Hans-Martien ten Napel (eds.), Regulating Political Parties European Democracies in Comparative Perspective (Leiden University Press, 2014) 19

might, in some cases, aim to replace a democratic regime or change the rules of democracy with the intention of introducing their non-democratic ideology. The Parliamentary Assembly of the Council of Europe has often referred to the rise of non-democratic and extremist parties and movements as a common threat to fundamental values.[9] Such extremist political activities are very often based on ideology and its political practices and conducts intolerance, exclusion, xenophobia, anti-Semitism, and ultra-nationalism.[10] The Venice Commission noted that "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…"[11] As a result, restriction on or dissolution of political parties can be justified only if it is needed by a democratic society, with concrete evidence that reveals a party is engaged in activities threatening democracy and fundamental freedoms. This includes only a political party advocates violence or aims to overthrow the existing constitutional order through armed struggle, terrorism, or subversive activity.[12] Accordingly, the Venice Commission adopted a set of guidelines on the dissolution of political parties: they can be restricted if they advocate violence in their programme and/or activities.[13] The grounds for restrictions on democratic rights must also be relevant, sufficient, persuasive, and narrowly interpreted, with consideration of the balance between rights and exceptions.[14]

The ECtHR has mainly adopted a liberal democratic approach against limiting and dissolving political parties in the context of Article 9(2), 10(2) and 11(2) of the European Convention on Human Rights in many cases. If a political party aims to destroy the rights and freedoms of others and exploit anti-democratic ideology, article 17 of the Convention aims to prevent totalitarian movements from using human rights as a vehicle for their causes.[15]

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9 Council of Europe, Parliamentary Assembly Resolution 1344 (2003)1 Threat Posed to Democracy by Extremist Parties and Movements in Europe

10 Council of Europe, Parliamentary Assembly Resolution 1344 (2003)1 Threat Posed to Democracy by Extremist Parties and Movements in Europe

11 Venice Commission, `European Commission for Democracy through Law Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures` (Strasbourg, 10 January 2000) 3

12 Venice Commission Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures Adopted by the Venice Commission at its 41st plenary session (Venice, 10 – 11 December 1999) para 10

13 Venice Commission, Guidelines on Political Party Regulation by Osce/Odihr and Venice Commission Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010)

14 Steven Greer, Exceptions to Articles 8-11 of the European Convention on Human Rights (Council of Europe 1997) 15

15 Paul Harvey, 'Militant democracy and the European Convention on Human Rights` (2004) 29 European Law Review 407, 411-2

According to the ECtHR, it is the duty of the respondent state to demonstrate the existence of the pressing social need behind given interference.[16] In other words, in order to restrict or to dissolve political parties, their interventions must meet `pressing social need` as set out by the ECtHR in that there must be (1) a risk of destruction of democracy; (2) reasonable evidence that proves the risk to democracy; (3) acts and speeches of the leaders and members of the political party which can be attributable to the party as whole, and (4) these acts and speeches structured a whole which gave a picture of a model of society defended by the party which is not compatible with the concept of democracy.[17] The ECtHR has only agreed with preventative measure of the states to prevent a political party from the destruction of human rights and democracy before it takes steps to implement a policy which is incompatible with the standards of the Convention and democracy.[18]

Furthermore, national authorities might have different approaches in terms of restricting political parties through their national law due to different understandings of human rights and democracy. Democratic countries have two broad models of responses to violent anti-system threats. One is a tolerant approach prioritising freedom of expression/association and greater political inclusion of extremists in democratic processes. Other is intolerant and suppressive approach to use more repressive legislative measures based on protecting the substantive values of democracy.[19] Unsolicited political actors might find a place in society to grow, or just to remain as a small minority that holds this political stance. These two different political scenarios create two main questions. First, if only a small minority holds unsolicited views, then why bother banning a political party when there are advantages to be gained by legitimizing this small group and absorbing them into the system? Second, if a large group espouses these views, then again, what is the point of banning them as a political group?[20] Democratic systems in different counties have found different answers for these questions. Some countries such as Turkey, Italy, Germany, Poland, Spain, and France have legitimized dissolution of

16 Donna Gomien, Short Guide to the European Convention on Human Rights (3th Ed, Council of Europe Publishing 2005) 76

17 Olgun Akbulut, `The State of Political Participation on Minorities in Turkey – an Analysis under the ECHR and the ICCPR` (2005) 12 The International Journal on Minority and Group Rights 375, 385

18 Refah Partisi (The Welfare Party) and others v. Turkey, Application no: 41340/98, 41342/98, 41343/98 (ECtHR 13.2.2003) para 102

19 Matthew Whiting, Sinn Féin and the IRA: From Revolution to Moderation (Edinburgh University Press 2018) 126

20 Yigal Mersel, `The dissolution of political parties: The problem of internal democracy` (2006) 4 International Journal of Constitutional Law 84, 92

political parties through constitutional or legislative mechanisms.[21] Some other countries such as the United States or United Kingdom do not need to dissolve such parties because of the weakness of the extremist veins and the strong homogeneity of society.[22] In this context, countries have developed various approaches to response to the political parties that have linkages with terrorism.

II. THE LINKAGE BETWEEN POLITICAL PARTIES AND TERRORISM

The image of political parties has a distinct liberal democratic bias, and almost always linked to the electoral process and the selection of candidates for public office.[23] They are mostly regarded as pursuing their goals through legitimate and non-violent means.[24] Yet this is a stereotype that has not been confirmed through the history of political parties since the 18th century.[25] Terror was embedded in the nineteenth century, in the years following the end of the Napoleonic era, various secret societies organised for the purpose of keeping alive the goals of the French Revolution, violent opposition to monarchism and support for national unification.[26] For instance, groups associated with political parties were dedicated to the overthrow of monarchy by the doctrine of "Governments were to be overthrown by rebellion and assassination".[27] When we look at the inter-war period between 1919 and 1939, European party politics were frequently militarized or para-militarized due to the atmosphere created by World War I, the Bolshevik Revolution and the Great Depression.[28] Paramilitary organisations were created by socialist, communist and fascist political parties in pre-Fascist Italy, Weimar Germany, Austria, and Russia, to advance their cause by means of other than the ballot box and other institutions of parliamentary democracy.[29] Party politics have kept its close ties with terrorism even today, but the relationship between political party activities and terrorism has been eliminated in Western and Central Europe after World War

21 Ibid

22 Robert A. Dahl, The American Oppositions: Affirmation and Denial, in Political Opposition in Western Democracies (Yale Univ. Press, 1968) 34

23 Alan Ware, Political Parties and Party Systems (New York: Oxford University Press 1996) 3.

24 Ibid

25 See. Leonard Weinberg, Ami Pedahzur and Arie Perliger, Political Parties and Terrorist Groups (Routledge 2008)

26 Walter Laqueur, A History of Terrorism ((Third Ed.) Boston, MA: Little, Brown & Co 2002) 3-21.

27 Martin Miller, 'The Intellectual Origins of Modern Terrorism in Europe' in Martha Crenshaw (ed.), Terrorism in Context (University Park, PA: Pennsylvania University Press 1995) 33.

28 Weinberg (n 25) 11.

29 Weinberg (n 25) 41.

II. Yet in developing and third world countries, after World War II, political parties played a major role for the cause of national liberation, while expelling British, French, and other European colonial powers.[30] In such countries, "all the main political parties had their private armies . . ."[31] Political parties and political violence including terrorism have emerged at the same time with mutual interaction.

Any group of people might rely on terrorist violence as its primary means of political expression as a "terrorist group". A political group may exercise terrorism in conjunction with other forms of political activities.[32] The linkage between terrorist violence and party politics might be established with interactions instigated by one group, to control another. Or they may be reciprocal with the actions of two (or more) groups influencing each other's behaviour.[33] This linkage occurs in different forms with various scenarios. An instance among many,[34] a terrorist organisation for its own aims and allegations may find it advantageous to develop a "political wing," to "better convey its message to the public, win parliamentary representation and, concomitantly achieve a degree of popular sympathy or acceptance".[35] Aims and allegations of terrorist organisations are impossibly succeeded with only acts of political violence.[36] Sinn Fein with respect to the Irish Republican Army (IRA) in Northern Ireland, Batasuna with respect to ETA in Spain, and (dissolved parties; People's Labour Party (HEP), Freedom and Democracy Party (ÖZDEP), Democracy Party (DEP), People's Democracy Party (HADEP), Democratic Society Party (DTP)) the Peoples' Democratic Party (HDP) and the Democratic Regions Party (DBP) with respect to the PKK in Turkey, has played such roles. These cases reveal different responses to political parties embedded with terrorism, under the review of the ECtHR

A. Restrictions on Sinn Fein due to its Linkage with IRA

The Irish Republican Army (IRA) fought in Irish War of Independence against the British government in Ireland, and it became as the legitimate army of the Irish Republic in April 1921. IRA was recognised by the parliament

30 See, Palombara Joseph La and Weiner Myron, 'The Origins and Development of Political Parties' in La Palombara and Weiner (eds), Political Parties and Political Development, Princeton (NJ: Princeton University Press 1966) 3–42.

31 Walter Laqueur, Guerrilla Warfare: A Historical and Critical Study (Boston, MA: Little, Brown 1976) 286.

32 Weinberg (n 25) 3.

33 For a discussion of the concept of "linkage" in the study of party politics see Kay Lawson, Political Parties and Linkage (New Haven, CT: Yale University Press 1980) 3–24.

34 See for more scenarios, Weinberg (n 25)

35 Weinberg (n 25) 25.

36 Weinberg (n 25) 25.

of the revolutionary Irish Republic as the National Army, also known as the Government forces. IRA divided into two opposing camps after the Republic of Ireland created in 1922 by the Anglo-Irish Treaty. The pro-treaty IRA disbanded and joined the Irish National Army but, the anti-treaty IRA stayed active with demands especially for Northern Ireland, created in 1921 by the Government of Ireland Act 1920, as part of the United Kingdom.[37] Before the Irish War of Independence, in July 1918, Sinn Fein Organisation and Sinn Fein Clubs, along with several other republican organisations, were declared as 'dangerous' associations in accordance with the Criminal Law and Procedure (Ireland) Act 1887, due to encouraging and aiding "persons to commit crime and promote and incite to acts of violence and intimidation and interfere with the administration of law and disturb the maintenance of law and order".[38] Northern Ireland government banned five republican organisations - The Irish Republican Brotherhood, the IRA, the Irish Volunteers, the republican women's organisation Cumann Na m'Ban and the youth organisation Fianna Na h'Eireann, under the Special Powers Act between 1922 and 1972.[39] Yet, the IRA initiated a military campaign in Northern Ireland during this time, and there had been severe sectarianism, political violence, rioting, arson, and disorder. Sinn Fein used different tactics to escape proscriptions and restrictions, by launching new political parties. For instance, in 1931 Saor Éire, a socialist party replaced Sinn Féin, but it was proscribed.[40] Another new political party under the name of Cumann Poblacta na h'Eireann established in 1936, but it was also included into the list of proscribed organisations.[41] Sinn Fein was affected negatively by these proscriptions, and it became the "political ancillary" of IRA in 1948.[42] Sinn Fein was a legal party under Northern Ireland's Special Act but it had been banned by the NI Home Affairs Minister (there was an Ulster Unionist party government in that time) until 1956.[43] It was banned after Sinn Fein won seats at the House of Commons and the IRA's 1956-62 Border Campaign (Operation Harvest based on guerrilla tactics).[44] Most of its

37 Angela K. Bourne, "Political Parties and Terrorism: Why ban Batasuna?" Paper presented at Elections, Public Opinion and Parties Annual Conference University of Exeter, 9-11 September 2010, 6

38 Ibid 5-6.

39 Laura K. Donohue, 'Regulating Northern Ireland: The Special Powers Act 1922-1972' (1998) 41(4) The Historical Journal 1089, 1112

40 Brian Hanley, The IRA 1926-1936 (Four Courts Press Dublin 2002) 179-180

41 Donohue, (n 39) 1112.

42 Brian Feeney, Sinn Fein: A Hundred Turbulent Years (Dublin: O'Brien. 2002) 189

43 See in, Angela Bourne, Security or Tolerance? The proscription of Political Parties in Democratic States. (2014). Paper Presented at European Consortium of Political Research, Salamanca, Spain. 8

44 Richard English, Armed Struggle, The History of the IRA (OUP 2003) 73

leaders were considered as members of the IRA, and the party was subjected to expulsion orders and broadcasting bans.[45]

Sectarian violence escalated in Northern Ireland during the 1960s and the British Government introduced direct rule over Northern Ireland on 24 March 1972 and the Emergency Powers Act 1973 was introduced.[46] These were temporary measures aiming to establish new political institutions for both communities (unionist and republicans).[47] The Direct rule did not help to reduce violence in the short term but the IRA increased the level of violence.[48] However, IRA (the Provisionals) took political negotiations into consideration rather than relying on only bombing campaign to precipitate British withdrawal.[49] Sinn Fein began to use political and parliamentary tactics with both ballots and arms together.[50] IRA announced the ceasefire in late June 1972 because there was a pressure among the Catholic community and from constitutional nationalists to defuse the violent tension.[51] IRA announced a truce (9 February 1975 to 23 January 1976) and talks were conducted between IRA and British government, and then Sinn Fein was legalized on 4 April 1974.[52]

From October 1988 to September 1994, the British government the Secretary of State for the Home Department issued two directives, adopting several restrictions related to broadcasts of the voices of representatives of Sinn Féin on television and radio in the UK. Such restrictions were already applied on legal organisations and on democratically elected officials.[53] The restrictions were introduced in a heightened period of violence and reflected the UK government's belief in a need to prevent Sinn Féin making offensive statements on the air, using the media for political advantage, increasing the fear in the society.[54] These directives prohibited interviews and direct statements from representatives and sympathisers of these listed organisations, at the British broadcasters.[55] Through such ban, the government used censorship

45 https://www.britannica.com/topic/Sinn-Fein

46 Ian McAllister and Sarah Nelson, 'Modern Developments in the Northern Ireland Party System' (1979) Parliamentary Affairs 279, 308

47 Michael Cunningham, British Government Policy in Northern Ireland 1969-2000 (Manchester UP 1991) 24.

48 Ibid 47.

49 Ibid 47.

50 https://www.britannica.com/topic/Sinn-Fein

51 Cunningham (n 47) 47.

52 John Bew, Frampton Martyn and Gurruchaga Inigo, Talking to Terrorists (New York: Columbia University Press 2009) 53

53 Geoffrey Bennett, 'The Northern Ireland Broadcasting Ban: Some Reflections on Judicial Review' (1989) 22 Vanderbilt Journal of Transnational Law 1119, 1146

54 In the House of Commons debate, Home Secretary Douglas Hurd argued. 139 PARL. DEB. H.C. (6th ser.) 1082 (1988). See also, Bennett (n 53) 1122-3.

55 McLaughlin Greg and Baker Stephen, The Propaganda of Peace: The Role of Media and

as a weapon in the propaganda war. Even before these directives, the British government put consistent pressure on the broadcasters to censor Republican voices.[56] Yet such indirect restrictions failed due to the British broadcasters' resistance on several occasions, so the British government clearly believed that there was a need for more control over the British broadcast media. All these restrictions on media freedom were based on the 'oxygen of publicity' of terrorism, then so the 'suffocation of censorship' was the 'necessity'.[57]

In May 1989, the British High Court decided that the Home Secretary had acted lawfully and the Appeal Court upheld the decision in December 1989.[58] The broadcasting ban ended after the IRA ceasefire on 31st August, 1994, the peace process began. These directives and their impacts were taken to the review of the ECtHR by Sinn Fein leaders and members, and by some journalists complain of a violation of the right to freedom of expression, in the 1990s. British government defended its directives at the ECtHR that they would not directly reduce the number of terrorist acts in the UK, they rather reduce the impact and influence of the advocates and supporters of such acts, and that they correspond to the need to prevent the giving of overt support for certain organisations.[59] The directives were designed to "deny representatives of known terrorist organisations and their political supporters a possibility of using the broadcast media as a platform for advocating their cause, encouraging support for their organisation and conveying the impression of their legitimacy".[60] The ECtHR emphasised that radio, television and the print media can be restricted, because the media has duties and responsibilities in a situation where politically motivated violence is widespread and the violation seeks to be incited with accessing mass media for propaganda.[61] Sinn Fein leaders and members complained at the ECtHR about the directives that they were prevented to (direct) access and contribute to the broadcast media, and to comment on economic and political developments.[62] Television producers and journalist complained that directives caused direct and continuing

Culture in The Northern Ireland Peace Process (Intellect 2010) 51-52

56 Before the broadcasting ban was introduced, more than 70 programmes have been cut or delayed. See in, Bill Rolston. 'Resistance and Terror: Lessons from Ireland', in Scraton Phil. (ed.) Beyond September 11: an Anthology of Dissent (London: Pluto Press 2002)

57 Max Pettigerew, The Oxygen of Publicity, and the Suffocation of Censorship: British Newspaper Representations of The Broadcasting Ban (1988- 1994) (UMI Dissertation Publishing 2011) 42

58 Brind and Others v. UK Application No. 18714/91 (ECtHR 12 July 1993) 3

59 Mclaughlin v. UK Application No. 18759/91 (ECtHR 9 May 1994) 10; Brind and Others v. UK 10

60 Purcell and Others v. Ireland Application no 15404/89 (ECtHR 16/04/1991) para.14

61 Ibid 16-17.

62 Mclaughlin v. UK Application p.10; Brind and Others v. UK para.10

interference and the "chilling effect" on the coverage of issues in Northern Ireland.[63] The ECtHR notes that the scope of the directives provided limited interference because the applicant "can broadcast his views on the airwaves, and the directives do not have any impact on the words that can be spoken or the images that can be shown on television or the radio."[64] Persons subjected to the directives, their words may be broadcasted, so the directives had no major impact on the applicant's democratic role.[65] The ECtHR has highlighted the special challenge in combating terrorism, to have a striking fair balance between the requirements of protecting freedom of expression (especially the free flow of information from the media) and the requirements of protecting the State and the public against terrorist organisations seeking to overthrow the democratic order and human rights.[66] The ECtHR notes that Sinn Fein's "support [for violence] is an intrinsic part of the policy of Sinn Fein".[67] Yet, the Home Secretary did not define Sinn Fein as unlawful organisaiton, only issued the directives to target terrorism,.[68] The ECtHR notes that the interference with the applicant's freedom of expression was proportionate to the aim sought to be pursued.[69]

Another case at the ECtHR related the linkage between Sinn Fein and the IRA is about an exclusion order (on 19 October 1993) under the Prevention of Terrorism Act 1989, prohibiting the first applicant (the President of Sinn Fein) from "being in, or entering, Great Britain".[70] It is because the first applicant was deemed in the commission, preparation or instigation of acts of terrorism.[71] The first applicant was invited to speak to members of parliaments (MPs) and several journalists in the House of Commons. This order was backed up with the basis that the first applicant would not attempt personally in acts of violence but that "he might say things which could lead to the instigation of terrorism".[72] Lord Justice Steyn noted that the President of Sinn Fein did not deny their connections with the IRA. He noted that the president of Sinn Fein has at least substantial connections with and the "ability to speak to the IRA".[73]

63 Brind and Others v. UK 10
64 Mclaughlin v. UK 10; Brind and Others v. UK 10
65 Mclaughlin v. UK 10; Brind and Others v. UK 10
66 Mclaughlin v. UK 11; Brind and Others v. UK 11
67 Mclaughlin v. UK 11
68 Mclaughlin v. UK 11; Brind and Others v. UK 11
69 Mclaughlin v. UK 11; Brind and Others v. UK 11
70 Adams and Benn v. UK, Application No. 28979/95 and 30343/96 (ECtHR 13 January 1997)
71 Adams and Benn v. UK 2,6
72 Ibid 2,6.
73 Adams and Benn v. UK 3,6

The ECtHR highlights that the Government order was the measure to prevent ideas and opinions which might, arguably, "purport to lend legitimacy to the use of violence in pursuit of political aims".[74] Applicants in this case can receive and impart their views by other means or not only in Great Britain but also in Northern Ireland.[75] The ECtHR draw attention to the political context of the time where ongoing efforts to establish a peace process and also the threat of renewed incidents of violence remained real and continuous.[76] The reasons above and the exclusion order was lifted after the announcement of the ceasefire by the IRA, so the complains became manifestly ill-founded. The broadcasting ban and exclusion order were both applied to reduce the impact and influence of the advocates and supporters of terrorism in the heightened period of violence. The ECtHR gave wider margin for the UK authorities to counter terrorism in terms of limiting party politics.

The broadcast ban and an exclusion order were applied to Sinn Fein while it was a lawful political party. Here the ECtHR agreed with the national authority that the ban was applicable to persons who supported violence as it is part of an organisation's policy. In this context, the ECtHR especially draw attention to fair balance between the requirements of protecting freedom of expression and protecting the State and the public against terrorist organisations. The ECtHR draw attention to evaluation of the context of restrictions with consideration of 'who the speaker is', 'how expression was delivered to audience', 'where expression was published or made', 'the time when the expression was delivered' or 'what the background of the case is'.[77]

B. Dissolution of Batasuna due to its Linkage with ETA

Basque Homeland and Freedom (ETA) was founded in 1959, to respond to the repression of the dictatorship of General Francisco Franco. ETA was led by the youths of the civil war generation of Basque nationalists and Basque Nationalist Party (PNV).[78] ETA has aimed to establish an independent socialist state, encompassing Basque provinces in Spain and France.[79] After General Franco's death in 1975, ETA formed a political party called the Basque Left,

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74 Purcell and Others v. Ireland Application no 15404/89 (ECtHR 16/04/1991) para 70

75 Adams and Benn v. UK 7

76 Ibid

77 Adams and Benn v. UK 7; See more cases, Ireland v. the United Kingdom, App no. 5310/71 (ECtHR, 18 January 1978) para 11; Zana v. Turkey App 69/1996/688/880 (ECtHR, 25 November 1997) paras 59-60; United Communist Part of Turkey and Others v. Turkey App no 133/1996/752/951 (ECtHR, 30 January 1998) para 59; Sürek v. Turkey (no. 3) App no 24735/94 (ECtHR, 8 July 1999) para 40

78 Diego Muro, 'Nationalism and Nostalgia: The Case of Radical Basque Nationalism' (2005) 11 Nations and Nationalism 571–89.

79 Ibid

which participated in democratic elections, and discussed statute of the Basque autonomy and constitution, as well as the renounced violence.[80] ETA defined the Basque Country as an occupied territory and has fought for national liberation against Spain. ETA launched an armed campaign for the national liberation and pursued a revolutionary war to defeat the state security services in Basque territories.[81]

Basque nationalists founded the Patriotic Socialist Coordinator (KAS) as a leading political party in 1975, covering trade union, youth, and women's organizations.[82] The KAS turned to be a whole social tapestry of groups supporting ETA - religious, cultural, ecological, women's, students' and among others as a centre of action for Herri Batasuna (HB).[83] In 1978, a coalition of parties, including a leading political party (People's Socialist Revolutionary Party, dissolved in 1992) HASI, formed the HB as a vehicle to represent ETA in elections. ETA and its supporters as collective body were known as the Basque National Liberation Movement (MLNV) or more generally, the radical nationalist left.[84] HB represented the MNLV in the electoral arena, so HB was designed as a tactical instrument for pursuing the 'accumulation of forces' which means to strengthen the MLNV, to become a focal point for the Basque radicalism through the cause of the independence by taking on various social grievances.[85] The 'symbiotic relationship' between these organisations (HB, KAS and ETA) was reflected in the presence of ETA and through Batasuna's leadership, elected representatives, and candidates.[86]

The Spanish Supreme Court in 2003 banned the HB, Euskal Herritarrok (EH) and Batasuna therefore it was the first-time the democratic Spain banning political parties.[87] The Spanish Supreme Court sought to establish that these parties were part of "a terrorist strategy of tactical separation" as they were a "single entity, namely, the terrorist organisation ETA." They were entitled as "having substantially the same ideology ... and, moreover, tightly controlled by that terrorist organisation".[88] A special chamber of the Supreme Court ruled that these parties violate democratic principles.[89] It ruled that the HB,

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80 Jan Mansvelt-Beck, Territory and Terror: Conflicting Nationalisms in the Basque Country (Routledge, 2005) 135-137

81 Muro (n 78) 571–89.

82 Jan Mansvelt-Beck (n 80) 188, 206.

83 Bourne (n 37) 4.

84 Jan Mansvelt-Beck (n 80) 190.

85 Ibid 203-207.

86 Diego Muro, Ethnicity and Violence (London: Routledge 2008) 127-131

87 Bourne (n 37)

88 Herri Batasuna and Batasuna v. Spain, Applications nos. 25803/04 and 25817/04 (ECtHR 30 June 2009) para 30

89 Bourne (n 37) 5.

EH, Batasuna and their leading members, had explicitly or tacitly supported, excused, or minimized the significance of terrorist acts; tried to neutralize and isolate opponents of terrorism; used terrorist symbols; collaborated with organizations supporting terrorism; and promoted or participated in the acts of homage to terrorists.[90] This ruling was later endorsed by both the Spanish Constitutional Court and the ECtHR.

In Spain, article 6 of the Constitution requires political parties to respect the Constitution, law and democracy in their internal structure andfunctioning. There is no direct regulation to ban political parties. Article 22 of the Constitution specifies associations (including political parties) illegal, if they "pursue ends or use means classified as criminal offences". Article 515 of the Spanish Penal Code also rules out that unlawful association, which has paramilitary nature or promotes, discrimination, hate or violence against persons, group, or associations due to their ideology, belief, or religion. Article 9 of the Organic Law on Political Parties rules that "a political party shall be declared illegal when its activity violates democratic principles" and "supplement and politically support the actions of terrorist organisations to achieve their objectives of subverting the constitutional order or seriously disturbing the public peace".

Dissolution of Batasuna were taken to the review of the ECtHR with the complain of a violation of the right to freedom of association.[91] The ECtHR held that the dissolution of Batasuna is compatible with a legitimate aim.[92] The ECtHR sets out that the protection of territorial integrity furthered the interest of national security and thus it constituted a legitimate aim. Likewise, the dissolution of Batasuna was not only in the interests of national security and territorial integrity but also necessary to ensure public safety and protect the rights and freedoms of others that are determined aims under the meaning of the article 11 of the Convention jurisprudence. In the case of Batasuna, the ECtHR dealt with the dissolution of a political party found guilty of supporting terrorism and violence. These political parties advocated and called the use of force and violence as a political weapon.[93] The entity of a political party for that purpose as a political wing for a terrorist organisation is incompatible with democratic principles. Batasuna had a position on the perpetuation of terrorist violence, which states enables the states to justify the reason for dissolution of political parties.[94] Spanish authorities brought evidence about the Batasuna that sought to prove its linkage with terrorist strategy of ETA. For instance, one of

90 Herri Batasuna and Batasuna v. Spain, para 33-38
91 Ibid
92 Ibid 92.
93 Ibid 88-89.
94 Ibid 46.

the Batasuna`s Cabinet Members threatened "if President Aznar wants war, the abertzale [left] and Euskal Herria [Basque Country] will respond with war." [95] Members of the Batasuna directorate were involved in cheers supporting E.T.A, "gora E.T.A. militarra" (long live E.T.A.). Batasuna's statements were made at the time of brutal ETA attacks on civilians. The ECtHR conducts an evaluation of political statements and activities in question, paying particular attention to their context which Bask region as a politically sensitive region with many terror activities for years.[96] In this regard, time and place played an important role in evaluating the Batasuna's link with ETA.[97] In this case, political parties and their members supported terrorist violence and they declared their political stance as being on the side of the terrorist organisations.[98] This political behaviour brought death and rising social tension. Dissolution of Batasuna was a requirement of public order and safety.[99] There is no protection of such expression/association under the Convention as fundamental rights. However, it is possible to find justifications for states` interferences to ensure rights and the continuation of democratic society.[100]

The ECtHR compares the party`s program (the Batasuna claimed it was a democratic association) with its activities.[101] The Court considered the speeches and activities of the Batasuna officials and members. For instance: the elected Batasuna members did not condemn fatal bombings and they rejected help for the victims of bombing attacks and their families; besides this, one spokesperson of Batasuna stated that he "does not wish that ETA stops killing". They called a terrorist prisoner a political prisoner and Batasuna`s organs, electoral list and parliamentary groups consisted of some ETA militants with criminal records.[102] Furthermore, it is worth mentioning that the Convention does not count just a political speech as supporting terrorism but, in Batasuna case, evidence was regarded as relevant and sufficient to reveal that Batasuna supported terrorism. The ECtHR ruled that Spain was responding to a pressing social need while it banned Batasuna because of its official`s support of violence and terrorism.[103]

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95 Ibid 34, 85.

96 Ibid 89.

97 Herri Batasuna and Batasuna v. Spain, See also, Leroy c. France App no 36109/03 (ECtHR, 2 October 2008) (Turkish Translation) para 45 and Zana v. Turkey, Application no 69/1996/688/880 (25 November 1997) para 51

98 Herri Batasuna and Batasuna v. Spain para 80, 88

99 Ibid 64, 94.

100 Ibid 91, 93.

101 Herri Batasuna and Batasuna v. Spain para 88

102 Ibid 33.

103 Thomas Ayres, `Batasuna Banned: The Dissolution of Political Parties Under the European Convention of Human Rights` (2004) 27 Boston College International and Comparative Law Review 99

In Batasuna case, the ECtHR ended up with its decision under the conditions of the attacks of 11 September 2001 (9/11). In this regard, the ECtHR refers in Batasuan case to the European Council framework decision on combating terrorism, Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe on restrictions on political parties in the Council of Europe member States; and the Council of Europe Convention for the Prevention of Terrorism (2005) (specifically refers to incitement to terrorism [apology and glorification of terrorism]). These international documents oblige national authorities to take measures to suppress the "active and passive support" to terrorist organisations and individuals.[104] Specifically, the Convention for the Prevention of Terrorism (2005) consists of similar features of the United Nations Security Council Resolution 1624 (2005) and the European Union Framework Decision on Combating Terrorism (2008)), involved in criminalizing indirect incitement to terrorism in the pro-9/11 era. These documents provide basis for restrictions for national authorities to intervene with "the dissemination of messages praising the perpetrator of an attack, the denigration of victims, calls for funding for terrorist organisations or other similar behaviour". These documents encourage to introduce provisions "to criminalise the distributing or otherwise making available of a message to the public advocating terrorist offences."[105] The post-9/11 era with these international instruments has suggested and encouraged criminalisation of indirect incitement after 9/11 incidents.[106] The ECtHR through Batasuna case introduced such developments in its case law. The ECtHR in the post 9/11 era (the 'war on terror' concept), approved the evidence brought by the Spanish authorities, which were the Batasuna officials' statements supporting violence and their concurrent membership with ETA.

C. Dissolution of the Political Wings of PKK

Kurdistan Workers' Party (PKK) was founded in November 1978 and Abdullah Öcalan was elected as the General Secretary.[107] The PKK has an ideology based on revolutionary socialism and Marxism-Leninism with Kurdish nationalism, seeking the foundation of an independent communist

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104 Herri Batasuna and Batasuna v. Spain para 90; Leroy c. France para 37, See Further, Martin Scheinin, 'Limits to Freedom of Expression: Lessons from Counter-Terrorism' in Tarlach McGonagle and Yvonne Donders (Ed.), The UN and Freedom of Expression (CUP: 2015) 437-8

105 Explanatory Report on Council of Europe Convention on the Prevention of Terrorism, 16 May 2005, para 94-96

106 Bibi van Ginkel, Incitement to Terrorism: A Matter of Prevention or Repression? (ICCT Research Paper, August 2011) 15-24

107 Halil Şen, PKK: Terör ve İdeoloji (Yeditepe Akademi, 2021) 77

"Kurdistan".[108] The PKK has sought to create an independent "Kurdistan" including lands from Turkey, Iraq, Syria, and Iran. It became the dominant organisation among other left-wing groups through eliminating them by force and coercion.[109] The PKK has started its full-scale insurgency on 15 August 1984 and since then committed many terrorist attacks on civilians and Turkish security forces. In 1999, the PKK leader Öcalan was captured and imprisoned, and PKK declared ceasefire until July 2004. The PKK renewed its structure and set up the Kurdistan Communities Union (KCK) in May 2007, as an umbrella organisation of "Kurdish" organisations.[110] The PKK through KCK aims to gather PKK related all municipals, NGOs, political parties under a single roof to coordinate and to manage all the mass activities.[111] All the elements within the KCK system have been attributed to Öcalan's absolute leadership.[112] The PKK has adopted the concept of "democratic autonomy" relying on the strategy to spread the terrorist violence to the cities from rural areas.[113] As part of the peace process in 2013, the PKK declared a ceasefire and promised to withdraw its members and weapons to the North of Iraq, but PKK broke down the ceasefire and declared 'self-governance' in July 2015.[114] The PKK gained experience and ability of the type of "war" to fight in city centres through PYD, its branch in Syria, by establishing "cantons" in the North of Syria during the civil war in Syria since 2011. So, the PKK has transferred such "war" to the Turkish cities and districts. The PKK has resumed its terrorist attacks with such "war", together with the assistance of municipalities by its political wings HDP and

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108 Ibid 71-74.

109 Rahman Dağ, Ideological Roots of The Perception Between Pro-Kurdish and Pro-Islamic Political Streams in Turkey (Cambridge Scholars Publishing, 2017)

110 The Kurdistan Communities Union (Kurdish: Koma Civakên Kurdistanê, KCK) is a "Kurdish" political organization committed to implementing Abdullah Öcalan's ideology of democratic confederalism. The KCK also serves as an umbrella group for all the democratic confederalist political parties of Kurdistan, including the PKK (The Kurdistan Workers' Party)/HPG (The People's Defense Forces) in Turkey, PJAK (The Party of Free Life of Kurdistan)/YRK (East Kurdistan Defense Units) in Iran, PYD (The Democratic Union Party)/ YPG (The People's Protections Units) in Syria and Kurdistan Democratic Solution Party (PÇDK) in Iraq. See also, Rahman Dağ, 'The Spillover Effect of the Syrian Crisis on the Peace Process in Turkey' (2018) 53 (8) Journal of Asian and African Studies, 1251, 1259-60.

111 Şen (n 107) 100.

112 KCK Convention

113 Şen (n 107) 113-114.

114 TRTWorld, A timeline of the PKK's war on Turkey: 1974-2019, 16 OCT 2019 <https://www.trtworld.com/magazine/a-timeline-of-the-pkk-s-war-on-turkey-1974-2019-30618> accessed 08.08.2021

DBP,[115] and used weapons and ammunition stored during the peace process period after mid-2015.[116]

As the party politics of the PKK, it had taken steps to organise itself in the political arena in late 1980s and finally, it decided to prioritise its political aspects, along with military aspects in its congress on 31 December 1990.[117] Political wings of the terrorist organisation have also been active in Turkey with the aim of making their propaganda, introducing their views and opinions, reflecting their thoughts, and achieving their purpose. The PKK has become the major Kurdish nationalist movement from the 1980s to the 1990s before the establishment of a legal political party stream with HEP in 1990.[118] As part of this decision, HEP was founded on 7 June 1990 and won seats in the Grand National Assembly of Turkey (TBMM). After the dissolution of HADEP, the leader of the PKK directly by himself gave an order to found a new political party, named it as 'Democratic Society Party' (DTP), terminated DEHAP and to join into DTP.[119] In other words, there has been close personal and ideological relationships between the PKK and its political parties.[120]

There have been around 10 prominent political parties founded by PKK led groups. HDP and DBP which are the legacy of all these dissolved parties (HEP, ÖZDEP, DEP, HADEP, DTP),[121] play the role of the political wings of the PKK, as its legal entities. These political parties have been under the control of the PKK, have carried out actions in accordance with the orders and instructions received from the Central Committee of the PKK, and have not accepted the PKK as a terrorist organisation.[122] On the 17 March 2021, the State Prosecutor to the Court of Cassation filed a lawsuit before the Constitutional Court demanding the closure of the HDP due to its ties with the PKK and its activities against the unity of the state.[123] The indictment called for a five-year

115 Interior Ministry, 'Belediyelerdeki Kayyum Sistemi Ve Mevcut Durum Raporu', p.10-18 < https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/IcSite/illeridaresi/Yayinlar/KayyumRaporu/kayyum_nihai_rapor.pdf> accessed 08.09.2021

116 Şen (n 107) 118-121.

117 Nihat Ali Özcan, PKK: Tarihi, İdeolojisi ve Yönetimi (ASAM Yayınları 1999) 119-120

118 Dağ (n 109) 53.

119 The Constitutional Court, E:2007/1 K:2009/4, 11.12.2009. 13, 24

120 See, Watts, N. F. 'Activists in Office: Pro-Kurdish Contentious Politics in Turkey' (2006) 5(2) Ethnopolitics, 125-144

121 The Constitutional Court, E:1992/1 K:1993/1, 14.7.1993.; E:1993/1 K:1993/2, 23.11.1993.; E:1993/3 K:1994/2, 16.6.1994.; E:1999/1 K:2003/1, 13.3.2003.; E:2007/1 K:2009/4, 11.12.2009.

122 The Constitutional Court, E:2007/1 K:2009/4, 11.12.2009. 335-6; Yargıtay Cumhuriyet Başsavcılığı, İddianame, Konu: Halkların Demokratik Partisi (HDP) Sayı: 6321649/2021/1, 17.03.2021. 26-27, 564

123 Yargıtay Cumhuriyet Başsavcılığı, İddianame, Konu: Halkların Demokratik Partisi (HDP) Sayı: 6321649/2021/1, 17.03.2021.

political ban for many of the HDP executives and members, and economic sanctions on the HDP assets. The State Prosecutor to the Court of Cassation's indictments were accepted by the Constitutional Court for trial on the 21 June 2021. In this trail, the State Prosecutor to the Court of Cassation listed 580 persons who were/are central/local committee executives of, PMs and mayors elected from HDP. They are sentenced, filed a public lawsuit, or investigated for crimes related terrorism.[124] For instance, Demirtaş, Yüksekdağ and Tuncel and many more chairpersons, executives of, and MPs from HDP (in different times), and many mayors, for instance Mızraklı who was the mayor of Diyarbakır, sentenced for being a member of, or making propaganda for a terrorist organisation, namely the PKK.[125]

PKK led groups have always kept a reserved or a spare political party as a back seat, in case of the Constitutional Court dissolved them, as a gateway to avoid disadvantages of dissolution of the political party. Even today, it is true that, if the Constitutional Court decides to dissolve HDP, DBP will be its spare party to resume in the same path. From HEP to HDP/DBP, this is a kind of continuation of a process, that shares same aims, methods, and human resources.[126] Persons, who committed terrorism related crimes, have been

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124 Some examples for those who are convicted but their trial is in the appeal. Ağrı 1. Ağır Ceza Mahkemesine 05.09.2017 2016/48 Esas, 2017/360 K., (Halil Aksoy was PM elected from HDP in 24. parliamentary term, was convicted for the crime of being a member of an armed terrorist organization); Van 2. Ağır Ceza Mahkemesi 22.03.2018 2016/490 E., 2018/174 K., (Lezgin Botan was PM elected from HDP in 25. and 26. parliamentary terms and executive of HDP in 2013, was convicted for making propaganda for a terrorist organization and being a member of an armed terrorist organization); For more examples, see Yargıtay Cumhuriyet Başsavcılığı, İddianame, Konu: Halkların Demokratik Partisi (HDP) Sayı:6321649/2021/1, 17.03.2021.

125 İstanbul 26. Ağır Ceza Mahkemesi E: 2017/173 K: 2018/152 (07.09.2018) (Selahattin Demirtaş who was MP elected from HDP in 24. parliamentary term, executive in 2018 -20 and, chairmen of HDP 2014-8, was convicted for making terrorist propaganda); Malatya 5. Ağır Ceza Mahkemesi E: 2018/1, K: 2019/49 (01.02.2019) (Sebahat Tuncel who was MP elected from HDP in 24. parliamentary term, executive in 2014 and, chairmen of HDP in 2013, was convicted for the crime of being a member of an armed terrorist organization and making terrorist propaganda); Ankara 13. Ağır Ceza Mahkemesi E:2016/8 K: 2017/25 (06.06.2017) (Figen Yüksekdağ Şenoğlu who was chairman of HDP in 2014 and PM elected from HDP in the 25. and 26. parliamentary term, (multiple times) convicted for making terrorist propaganda); Şanlıurfa 5. Ağır Ceza Mahkemesi E: 2016/29 K: 2018/139 (01.03.2018) (Dilek Öcalan was PM elected from HDP in 25. and 26. parliamentary terms, was convicted for making terrorist propaganda); Diyarbakır 9. Ağır Ceza Mahkemesi E: 2017/129 K: 2020/128 (09.03.2020) (Adnan Selçuk Mızraklı who was PM elected from HDP in 27. parliamentary term, executive of HDP in 2018 and mayor of Diyarbakır in 2019, was convicted for the crime of being a member of an armed terrorist organization) For more examples, please see: Yargitay Cumhuriyet Başsavciliği, İddianame, Konu: Halkların Demokratik Partisi (HDP) Sayı: 6321649/2021/1, 17.03.2021.

126 See: The Constitutional Court, E:1999/1 K:2003/1, 13.3.2003.; Yargıtay Cumhuriyet

doing 'politics' in the layers of these political parties. Even the European Court approve such realty that the DTP (the latest dissolved political party) was born from the pro-Kurdish left political movement and political parties.[127]

The Constitutional Court dissolved these political parties through the evaluation of the speeches and activities of the party executives and members which propagate and facilitate PKK's terrorist activities.[128] Political party's program (specifically DEP's call for peace)[129] and their declarations, meetings, and demonstrations,[130] were crucial documents and evidence for the Constitutional Court in its evaluation for the final decision. The Constitutional Court also considered the criminal record of members of attributed political parties who committed crimes listed under the Law on Fight Against Terrorism, such as being member of a terrorist organisation, aiding and abetting terrorist organization, and making propaganda to recruit new militants for the PKK.[131] The Constitutional Court also considered the materials retained by the security forces' raid to these political parties' facilities.[132] Another important matter is that the Constitutional Court paid attention to the testimonies made by those arrested by the security forces in counter-terrorism operations.[133] There were many testimonies revealing the link between the PKK and these parties. For instance, one of the common testimonies given was that the provincial and district organisations of these parties became the recruitment offices of the PKK.[134]

Activities of political parties are guaranteed with some limitations under the article 68 and 69 of the Constitution.[135] The Constitutional Court dissolved

Başsavcılığı, İddianame, Konu: Halkların Demokratik Partisi (HDP) Sayı: 6321649/2021/1, 17.03.2021. 565

127 DTP and Others v. Turkey Application No. 3840/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10 (12 January 2016) para 75

128 The Constitutional Court, E:1992/1 K:1993/1, 14.7.1993. p.123, 125, 181; E:1999/1 K:2003/1, 13.3.2003. 3 (the Constitutional Court specifically evaluated HADEP's activities that disrupt the territorial integrity of national unity of Turkey and understood that HADEP was PKK's political wing.); E:2007/1 K:2009/4 (11.12.2009) 1

129 The Constitutional Court, E:1993/3 K:1994/2, 16.6.1994.; E:1993/1 K:1993/2, 23.11.1993.

130 The Constitutional Court, E:2007/1 K:2009/4, 11.12.2009. 294-295

131 The Constitutional Court, E:1992/1 K:1993/1, 14.7.1993. 124-125; E:1999/1 K:2003/1, 13.3.2003. 113-114

132 The Constitutional Court, E:1999/1 K:2003/1, 13.3.2003. 21, 34; E:2007/1 K:2009/4, 11.12.2009. 291-294; E:2007/1 K:2009/4, 11.12.2009. 295-298

133 The Constitutional Court, E:1999/1 K:2003/1, 13.3.2003. 37-46

134 Ibid 44-7.; See more, Talha Kose, PKK's dirty gamble with Kurdish Youth, 7 September 2019 <https://www.setav.org/en/pkks-dirty-gamble-with-kurdish-youth/< accessed on 13.09.2021

135 Turkey has colourful political environment where 116 political parties are actively operating. Ministry of Interior, <https://www.icisleri.gov.tr/turkiye-genelinde-116-aktif-siyasi-parti-var> accessed 01.10.2021

pro-PKK parties due to the reason as becoming the centre against "the indivisible integrity of the state with its territory and nation" and to create racial discrimination.[136] The Constitutional Court decided in the case of HADEP that the party provided aid to and supported terrorism, against the indivisible integrity of the State with its territory and nation.[137] The party became the centre of acts that consist of an unconstitutional nature. The Constitutional Court sought to find whether HADEP's activities and discourses were in parallel with the activities and discourses of the PKK.[138] Here it is important to explain the meaning of being "centre" defined by Article 69 of the Constitution, amended in 2001. So a political party become 'centre' against the Constitution, if it carries out its actions "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." Thus, as to whether decide dissolution of a party, its actions must be intensively, "implicitly or explicitly" and determinately made by specified incumbents.[139]

Moreover, the ECtHR has already examined several applications concerning the permanent dissolutions of pro-PKK political parties: HEP, OZDEP, DEP, HADEP and DTP.[140] These parties were dissolved with an immediate effect, their assets were liquidated and transferred to the Treasury and its leaders were banned from carrying on certain similar political activities. These political parties were dissolved by the Constitutional Court due to becoming a centre of illegal activities undermining the territorial integrity and of the State and the unity of the nation.[141] However, the ECtHR found violations of article

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136 The Constitutional Court, E:1999/1 K:2003/1, 13.3.2003. 186; E:1992/1 K:1993/1, 14.7.1993. 181; E:1993/1 K:1993/2, 23.11.1993. 62; E:2007/1 E:2009/4, 11.12.2009. 339

137 The Constitutional Court, E:2007/1 K:2009/4, 11.12.2009. 218-221

138 The Constitutional Court, E:1999/1 K:2003/1, 13.3.2003. 2

139 The Constitutional Court, E:1999/1 K:2003/1, 13.3.2003. 182,186; E:2007/1 K:2009/4, 11.12.2009. 338; see also, Bülent Algan, 'Dissolution of Political Parties by the Constitutional Court in Turkey: An Everlasting Conflict Between the Court and The Parliament?' (2011) 60 (4) AUHFD 809

140 Yazar and Others v. Turkey, Applications Nos. 22723/93, 22724/93 And 22725/93 (ECtHR 9 April 2002); Freedom and Democracy Party (ÖZDEP) v. Turkey, Application No. 23885/94 (ECtHR 8 December 1999); Dicle for DEP v. Turkey, Application No: 25141/94 (Turkish Translation) (10 December 2002); HADEP And Demir V. Turkey, Application No. 28003/03 (14/03/2011); DTP and Others v. Turkey, Application no. 3840/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10 (12 January 2016)

141 The Constitutional Court, E:1992/1 K:1993/1, 14.7.1993. 181; E:1993/1 K:1993/2, 23.11.1993. 62; E:1993/3 K:1994/2, 16.6.1994. 106; E:1999/1 K:2003/1, 13.3.2003. 186; E:2007/1 K:2009/4, 11.12.2009. 338

11 in all these cases and their dissolutions were disproportionate to the aim pursued and consequently unnecessary in a democratic society.[142] The ECtHR held that political parties should have the chance to introduce themselves into public debate in an attempt to seek solutions for the country`s problems and to maintain the proper functioning of democracy.[143] No doubt, political parties as the key actors in a democratic society must have freedom to define their policies, even they might be incompatible with the constitutional system. Otherwise, the constitutional system strengthens its political and legal status quo.[144] The ECtHR noted that the limits of permissible criticism are wider regarding the government rather than a private citizen. The actions or omissions of national authorities are under scrutiny of the press and public opinion.[145] The ECtHR considered the activities and statements of the pro-PKK parties, as public debate to find solutions to general problems concerning politicians of all persuasions.[146]

The ECtHR has got these parties off the hook, while the Constitutional Court submitted the activities and statements which revealed deemed link between the PKK and these pro-PKK political parties. The Court did not regard evidence brought by the Constitutional Court, as sufficient to equate the activities and statements of these political parties, involved with the activities of the terrorism.[147] The ECtHR sought a connection between the speeches, activities, party program, declarations, meetings, demonstrations and the criminal record of these party members, and the terrorist actions of the PKK. Yet, the ECtHR ruled that none of these activities and statements made by these parties' members encouraged violence, armed resistance or insurrection.[148] Even the ECtHR has laundered them and defined (for example DTP) as a significant political party which support a peaceful solution for the Kurdish question.[149] However, these political parties supported the creation of 'Kurdish' province and asserted that the 'Kurdish' separatist group (PKK) were freedom

142 HADEP And Demir V. Turkey para 80

143 Yazar and Others v. Turkey para 58

144 Birol Akgun and Yusuf Sevki Hakyemez, `Limitations on the Freedom of Political Parties in Turkey and the Jurisdiction of the European Court of Human Rights` (2002) 7 Mediterranean Politics 54–78

145 Castells v. Spain, Application no. 11798/85 (ECtHR 23/04/1992) para 46

146 Yazar and Others v. Turkey para.58; Dicle for DEP v. Turkey 8-9; Freedom and Democracy Party (ÖZDEP) v. Turkey, para 44; HADEP and Demir v. Turkey para 78-79; DTP and Others v. Turkey para 78; Vogt v. Germany para 52, and United Communist Party of Turkey para.57

147 Yazar and Others v. Turkey para.59; Dicle for DEP v. Turkey 9; Freedom and Democracy Party (ÖZDEP) v. Turkey, para 54; HADEP and Demir v. Turkey para 70; DTP and Others v. Turkey para 109-110

148 HADEP and Demir v. Turkey para 70

149 DTP and Others v. Turkey

fighters and advocated self-determination for the Kurds, in the territory of a sovereign state.[150] They have promoted the tolerance of terrorist acts, justified and gave confidence to their acts of violence.[151] There are only rare examples of admitting that the ECtHR noted that pro-PKK politicians approved violence as a political way, provoked prejudices among different social groups to be committed deadly attacks, and justified use of violence.[152] For instance, the former mayor of Diyarbakir, Zana said, "I support the PKK national liberation movement; on the other hand, I am not in favour of massacres. Anyone can make mistakes, and the PKK kill women and children by mistake …"[153]

Two scenarios distinguished in these ECtHR cases; firstly, as the ECtHR asserts, the Turkish authorities fail to explain the link between these parties and the PKK. Turkey in these cases preferably aimed to bring the evidence explaining separatism rather than the linkage with the PKK. The ECtHR notes that when a group of people calls for autonomy or even requests secession of a part of the country's territory and demanding fundamental constitutional and territorial changes, these cannot be adequate to prohibit its association because these demands do not automatically introduce a threat to the state`s territorial integrity and national security.[154] Yet in the cases of HEP, OZDEP, DEP, HADEP and DTP, HDP, DBP, all these parties have been under the control of the PKK as its political wing and determined to fulfill such changes with the methods that the PKK has adopted. Separatism is closely associated with terrorism in the cases of pro-PKK parties. The post-9/11 era, as discussed above, did not make any changes on the ECtHR's approach to the disclosure of pro-PKK political parties, while they have had their direct rather than indirect linkage with terrorism. The ECtHR had more restrictive ground with the European Council framework decision on combating terrorism 13 June 2002, Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe on restrictions on political parties in the Council of Europe member States; the Council of Europe Convention for the Prevention of Terrorism (2005). Yet the ECtHR failed to detect the linkage between these political parties and PKK/KCK. Even the reality of terrorism in Turkey was much more imminent and intense than Spain and the UK. The post 9/11 era (the 'war on terror' concept) did not helped Turkey in the cases of the ECtHR to have wider degree of margin to interfere with the political wings of the PKK.

Second scenario, the ECtHR has judicial bias that did not allow to identify the linkage between pro-PKK parties and the PKK. It had a liberal perspective

150 Yazar and Others v. Turkey para 22

151 Yazar and Others v. Turkey

152 Dicle for DEP v. Turkey 9-10

153 Zana v. Turkey, para 12

154 Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, Applications nos. 29221/95 and 29225/95 (ECtHR 02/01/2002) para 97

in cases of HEP, OZDEP, DEP, HADEP and DTP in compression with cases of Batasuna and Sinn Fein. On the one hand, Batasuna's refusal to condemn violence against a backdrop of terrorism, and the directives against the Sinn Fein executives as to "deny representatives of known terrorist organisations and their political supporters", were considered as the linkage with terrorism.[155] On the other hand, the ECtHR, in these five cases of pro-PKK parties, failed to detect such linkage, even the ECtHR discovered that the executive of the DTP avoid defining PKK as a terrorist organisation.[156] The sensitive and complex issues of terrorism in Spain and the UK were elaborated rigorously by the ECtHR, but not in Turkey,[157] despite the scale of the conflict in Turkey has been much deadly, intense and complicated. In comparison with Spain and the UK cases, the ECtHR failed to evaluate the content and context of expression and activities of members of these pro-PKK parties to detect their linkage with terrorism. Yet the linkage between HEP, OZDEP, DEP, HADEP, DTP, HDP and DBP and the PKK/KCK, is a well-known fact, has been identified in political and legal circles in Turkey, Europe, and elsewhere.

CONCLUSION

The modern political parties play a regular and indispensable systemic role in democracies specifically through organising and legitimising the election process and forming the government. Thus, political parties are collective platforms for the citizens to practice their right to associate and express. However, there have been some activities of groups and individuals whose aim to establish a system or society incompatible with democracy through abusing or misusing democratic institutions and procedures. This is also true that the image of political parties has a distinct liberal democratic bias, and they are considered mostly engaging in legitimate and non-violent means.[158] Yet this is a stereotype, if considering the history of political parties, terror has been rooted in political parties since 18th century. Having this historical background in mind, democracy needs to ensure its own safety, if political parties exercise terrorism in conjunction with other forms of political activities.[159]

Moreover, democratic countries adopted two broad models of responses to terrorism in party politics. One is a tolerant approach to give greater political inclusion of extremists in democratic processes and the other is intolerant and suppressive approach using repressive legislative measures on extremist

155 Brind and Others v. UK 10
156 DTP and Others v. Turkey para 108
157 Adams and Benn v. UK p.7; Herri Batasuna and Batasuna v. Spain para 89
158 Ware (n 23) 3.
159 Weinberg (n 25) 3.

to protect values of democracy.[160] The United Kingdom, Spain, and Turkey adopted different forms of measures on deemed link between political parties and terrorism. Such linkage occurred, if a terrorist organization find it advantageous to develop a "political wing," for their own aims and allegations, to convey their message to the public, to win parliamentary representation and, to concomitantly get a degree of sympathy or acceptance.[161] The restrictions implemented on these political parties by national authorities have been also reviewed by the ECtHR. While national authorities restricted these political parties due to their unconstitutional aims by violent means, the ECtHR sought that is there a risk to destruct democracy with reasonable evidence and entire picture drawn by the acts and speeches of the leaders and members of a political party. [162] The ECtHR has approved under its review, these two types of approaches to restrict/dissolve political parties if legal measures meet with its criteria. So, it is not the matter of adopting the liberal or restrictive approach. The ECtHR specifically seeks a "pressing social need" to impose a restriction on the rights as necessity for a democratic society. Yet, the UK and Spain's response to the parties in question considered by the ECtHR as proportionate measures with the Convention, but Turkey's dissolution of pro-PKK/KCK parties considered as a violation of the Convention.

The linkage between aforesaid parties and terrorist organisations has been identified in political and legal spheres in the UK, Spain, Turkey, Europe. Yet, the ECtHR determinedly had a different angle in five cases of pro-PKK parties in compression with Batasuana and Sinn Fein politics. The ECtHR agreed that omissions or a lack of response to terrorism is that politician's stance was overtly supportive action. The ECtHR elaborated to the historical and social context of the fight against terrorism in Spain and the sensitive and complex issues in the UK. Yet, the ECtHR ignored a contextual relationship between escalation of terrorism and pro-PKK parties. Similarly, while the PKK imbedded autonomous or separatist demands in these parties, the ECtHR found such demands unconvincing to reveal that pro-PKK parties involvement with terrorism. Furthermore, the ECtHR referred to the criminalisation of public provocation under the CoE Convention on the Prevention of Terrorism in the case of Batasuna. On the other hand, the Court regarded pro-PKK political parties' statements and activities as dissenting activities playing its role in a democratic country where there was escalation between Turkish security forces and PKK, in the meantime, many deadly terrorist attacks committed by

160 Whiting (n 19) 126.
161 Weinberg (n 25) 25.
162 Akbulut (n 17) 385.

PKK since 1984.[163] It is very surprising that the ECtHR did not even identify such linkage in the context of terror wave in the last three decades and in the post-9/11, 'war on terror' concept.

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[163] DTP and Others v. Turkey para 98; Sürek v. Turkey (No. 4) Application no. 24762/94 (8 July 1999) para 58

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