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

THIRD SECTION

CASE OF REFAH PARTISI (THE WELFARE PARTY) AND OTHERS v. TURKEY

(Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98)

JUDGMENT

STRASBOURG

31 July 2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Refah Partisi (The Welfare Party) and Others v. Turkey,

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

Mr J.-P. COSTA, *President,*
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr R. TÜRMEN,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges,*
and Mrs S. DOLLÉ, *Section Registrar,*

Having deliberated in private on 3 October 2000, 16 January 2001 and 10 July 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in four applications (nos. 41340/98, 41342/98, 41343/98 and 41344/98) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a political party registered under Turkish law, *Refah Partisi* (the Welfare Party – hereinafter "Refah"), and three Turkish nationals, Necmettin Erbakan, Şevket Kazan and Ahmet Tekdal, ("the applicants") on 22 May 1998.

2. The applicants were represented by Mr Yasar Gürkan, a lawyer practising in Istanbul, and Mr Laurent Hincker, a lawyer practising in Strasbourg, France. The Turkish Government ("the Government") were represented by their Co-Agent, Mr Ergun Özbudun, a university lecturer.

3. The applicants alleged in particular that the dissolution of Refah by the Turkish Constitutional Court and the suspension of certain political rights of the other applicants, who were leaders of Refah at the material time, had breached Articles 9, 10, 11, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1 to the Convention.

4. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that

would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. The Chamber decided to join the applications (Rule 43 § 1).

7. By a decision of 3 October 2000, it declared them partly admissible.

8. The Government filed additional written observations on 11 December 2000.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 16 January 2001 (Rule 59 § 2).

There appeared before the Court:

(a) *for the respondent Government*

Mr	E. ÖZBUDUN,	*Co-Agent*,
Mr	Y. BELET,	
Mr	M. ÖZMEN,	
Mrs	D. AKÇAY,	
Mr	E. ERGÜL,	
Miss	A. GÜNYAKTI,	
Miss	İ. ALTINTAŞ,	*Counsel*;

(b) *for the applicants*

Mr	L. HINCKER,	*Counsel*,
Mr	M. KAMALAK,	
Miss	M. LEMAITRE,	*Advisers*.

The Court heard addresses by Mr Özbudun and Mr Hincker.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. Refah was founded on 19 July 1983. It took part in a number of general and local elections, ultimately obtaining approximately 22% of the votes in the general election of 1995 and about 35% of the votes in the local elections of 3 November 1996.

The results of the 1995 general election made Refah the largest political party in the Turkish parliament with a total of 158 seats in the Grand National Assembly (out of 450 altogether). On 28 June 1996 Refah came to

power by forming a coalition government with the centre-right True Path (*Doğru Yol*) Party, led by Mrs Tansu Ciller.

11. On 21 May 1997 Principal State Counsel at the Court of Cassation applied to the Turkish Constitutional Court to have *Refah* dissolved on the grounds that it was a "centre" (*mihrak*) of activities contrary to the principles of secularism. In support of his application, he referred to the following acts and remarks by leaders and members of Refah.

– Whenever they spoke in public Refah's chairman and other leaders advocated the wearing of Islamic headscarves in State schools and buildings occupied by public administrative authorities, whereas the Constitutional Court had already ruled that this infringed the principle of secularism enshrined in the Constitution.

– At a meeting on constitutional reform Refah's chairman, Necmettin Erbakan, had made proposals tending towards the abolition of secularism in Turkey. He had suggested that the adherents of each religious movement should obey the rules of their own organisations rather than Turkish law.

– On 13 April 1994 Necmettin Erbakan had asked Refah's representatives in the Grand National Assembly to consider whether the change in the social order which the party sought would be "peaceful or violent" and would be achieved "harmoniously or by bloodshed".

– At a seminar held in January 1991 in Sivas Necmettin Erbakan had called on Muslims to join Refah, saying that only his party could establish the supremacy of the Koran through a holy war (jihad) and that Muslims should therefore make donations to Refah rather than distributing alms to third parties.

– During Ramadan Necmettin Erbakan had received the heads of the Islamist movements at the residence reserved for the Prime Minister, thus assuring them of his support.

– Several members of Refah, including some in high office, had made speeches calling for the secular political system to be replaced by a theocratic regime. These persons had also advocated the elimination of the opponents of this policy, if necessary by force. Refah, by refusing to open disciplinary proceedings against the members concerned and even, in certain cases, facilitating the dissemination of their speeches, had tacitly approved the views expressed.

– On 8 May 1997 a Refah MP, İbrahim Halil Çelik, had said in front of journalists in the corridors of the parliament building that blood would flow if an attempt was made to close the "*İmam-Hatip*" theological colleges, that the situation might become worse than in Algeria, that he personally wanted blood to flow so that democracy could be installed in the country, that he would strike back against anyone who attacked him and that he would fight to the end for the introduction of Islamic law (sharia).

– The Minister of Justice, Şevket Yılmaz (a Refah MP and vice-chairman of the party), had expressed his support for the mayor of Sincan

by visiting him in the prison where he had been detained pending trial after being charged with publicly vindicating international Islamist terrorist groups.

Principal State Counsel further observed that Refah had not opened any disciplinary proceedings against those responsible for the above-mentioned acts and remarks.

12. On 7 July 1997 Principal State Counsel submitted new evidence against Refah to the Constitutional Court.

13. On 4 August 1997 Refah's representatives filed their defence submissions, in which they relied on international human-rights-protection instruments, including the Convention, pointing out that these instruments formed part of Turkish written law. They further referred to the case-law of the Commission, which had expressed the opinion that Article 11 of the Convention had been breached in the cases concerning the Turkish United Communist Party and the Socialist Party, and to the case-law of the Court and the Commission on the restrictions on freedom of expression and freedom of association authorised by the second paragraphs of Articles 10 and 11 of the Convention. They contended that the dissolution of Refah had not been prompted by a pressing social need and was not necessary in a democratic society. Nor, according to Refah's representatives, was their party's dissolution justified by application of the "clear and present danger" test laid down by the Supreme Court of the United States of America.

14. Refah's representatives further rejected Principal State Counsel's argument that the party was a "centre" of activities which undermined the secular nature of the Republic. They submitted that Refah was not caught by the criteria laid down in the Law on the regulation of political parties for determining whether a political party constituted a "centre of activities contrary to the Constitution". They observed, *inter alia*, that the prosecuting authorities had not issued any warning to Refah (which had four million members) that might have enabled it to expel any of its members whose acts had contravened the provisions of the Criminal Code.

15. Refah's representatives also set out their point of view on the concept of secularism. They asserted that the principle of secularism implied respect for all beliefs and that Refah had shown such respect in its political activity.

16. The applicants' representatives alleged that in accusing Necmettin Erbakan of supporting the use of force to achieve political ends and of infringing the principle of secularism the prosecuting authorities had merely cited extracts from his speeches which they had distorted and taken out of context. Moreover, these remarks were covered by Mr Erbakan's parliamentary immunity. They further noted that the dinner Mr Erbakan had given to senior officials of the Religious Affairs Department and former members of the theology faculty had been presented by Principal State

Counsel as a reception organised for the leaders of religious movements, which had in any event been legally proscribed since 1925.

17. With regard to the remarks of other Refah leaders and members criticised by Principal State Counsel's office, Refah's representatives observed that these did not constitute any criminal offence.

They asserted that none of the MPs concerned was authorised to represent Refah or held office within the party and claimed that the prosecuting authorities had not set in motion the procedure laid down in the Law on the regulation of political parties so as to give Refah the opportunity, if the need arose, to decide whether or not the persons concerned should continue to be members of the party; the first time Refah's leadership had been informed of the remarks criticised in the case had been when they read Principal State Counsel's submissions. The three MPs under attack had been expelled from the party, which had thus done what was necessary to avoid becoming a "centre" of illegal activities within the meaning of the Law on the regulation of political parties.

18. On 5 August 1997 Principal State Counsel filed his observations on the merits of the case with the Constitutional Court. He submitted that according to the Convention and the case-law of the Turkish courts on constitutional law issues nothing obliged States to tolerate the existence of political parties that sought the destruction of democracy and the rule of law. He contended that Refah, by describing itself as an army engaged in a jihad and by openly declaring its intention to replace the Republic's statute law by sharia, had demonstrated that its objectives were incompatible with the requirements of a democratic society. Refah's aim to establish a plurality of legal systems (in which each group would be governed by a legal system in conformity with its members' religious beliefs) constituted the first stage in the process designed to substitute a theocratic regime for the Republic.

19. In their observations on the merits of the case Refah's representatives again argued that the dissolution of their party could not be grounded on any of the restrictions permitted by the second paragraph of Article 11 of the Convention. They went on to say that Article 17 of the Convention was not applicable in the case, as Refah had nothing in common with political parties which sought to instal a totalitarian regime. Furthermore, the plurality of legal systems which it proposed was actually intended to promote the freedom to enter into contracts and the freedom to choose which court should have jurisdiction.

20. On 11 November 1997 Principal State Counsel submitted his observations orally. On 18 and 20 November 1997 Necmettin Erbakan submitted his oral observations on behalf of Refah.

21. In a judgment of 9 January 1998 the Constitutional Court, referring to Article 68 § 6 of the Constitution, ruled that the second paragraph of section 103 of the Law on the regulation of political parties was

unconstitutional and declared it null and void. That provision, taken together with section 101(d) of the same Law, provided that for a political party to be considered a "centre" of activities contrary to the elementary principles of the Republic its members had to have been convicted of criminal offences. According to the Constitutional Court, that statutory restriction did not cover all cases contrary to the principles of the Republic. It pointed out, among other observations, that after the repeal of Article 163 of the Turkish Criminal Code activities contrary to the principle of secularism no longer attracted criminal penalties.

22. On 16 January 1998 the Constitutional Court dissolved Refah on the ground that it had become a "centre of activities contrary to the principle of secularism". It based its decision on sections 101(b) and 103(1) of Law no. 2820 on the regulation of political parties. It also ordered the transfer of Refah's assets to the Treasury as an automatic consequence of dissolution, in accordance with section 107 of Law no. 2820.

23. In its judgment the Constitutional Court first dismissed the preliminary objections raised by Refah. In that connection it held that the parliamentary immunity of the MPs whose remarks had been mentioned in Principal State Counsel's submissions of 21 May 1997 had nothing to do with consideration of an application for the dissolution of a political party and temporary forfeiture by its members of certain political rights, but was a question of the criminal responsibility of the MPs concerned, which was not a matter of constitutional law.

24. With regard to the merits, the Constitutional Court held that while polutical parties were the main protagonists of democratic politics their activities were not exempt from certain restrictions. In particular, activities by them incompatible with the rule of law could not be tolerated. The Constitutional Court referred to the provisions of the Constitution which imposed respect for secularism on the various organs of political power. It also cited the numerous provisions of domestic legislation requiring political parties to apply the principle of secularism in a number of fields of political and social life. The Constitutional Court observed that secularism was one of the indispensable conditions of democracy. In Turkey the principle of secularism was safeguarded by the Constitution, on account of the country's historical experience and the specific features of Islam. The democratic regime was incompatible with the rules of sharia. The principle of secularism prevented the State from manifesting a preference for a particular religion or belief and constituted the foundation of freedom of conscience and equality between citizens before the law. Intervention by the State to preserve the secular nature of the political regime had to be considered necessary in a democratic society.

25. The Constitutional Court held that the following evidence proved that Refah had become a "centre of activities contrary to the principle of secularism":

- Refah's chairman, Necmettin Erbakan, had encouraged the wearing of Islamic headscarves in public and educational establishments. On 10 October 1993, at the party's Fourth Ordinary General Meeting, he had said:

> "... when we were in government, for four years, the notorious Article 163 of the Persecution (Torture) Code was never applied against any child in the country. In our time there was never any question of hostility to the wearing of headscarves..."

In his speech of 14 December 1995 before the general election he had said:

> "... [university] chancellors are going to retreat before the headscarf when Refah comes to power".

But manifesting one's religion in such a manner amounted to exerting pressure on persons who did not follow that practice and created discrimination on the ground of religion or beliefs. That finding was supported by various rulings of the Constitutional Court and the Supreme Administrative Court and by the case-law of the European Commission of Human Rights on applications nos. 16278/90 and 18783/91 concerning the wearing of headscarves at universities.

- The plurality of legal systems proposed by Necmettin Erbakan was nothing to do with the freedom to enter into contracts as Refah claimed, but was an attempt to establish a distinction between citizens on the ground of their religion and beliefs and was aimed at the installation of a theocratic regime. On 23 March 1993 Mr Erbakan had made the following speech to the National Assembly:

> "... 'you shall live in a manner compatible with your beliefs'. We want despotism to be abolished. There must be several legal systems. The citizen must be able to choose for himself which legal system is most appropriate for him, within a framework of general principles. Moreover, that has always been the case throughout our history. In our history there have been various religious movements. Everyone lived according to the legal rules of his own organisation, and so everyone lived in peace. Why, then, should I be obliged to live according to another's rules? ... The right to choose one's own legal system is an integral part of the freedom of religion."

In addition, Mr Erbakan had spoken as follows on 10 October 1993 at a Refah party conference:

> "... We shall guarantee all human rights. We shall guarantee to everyone the right to live as he sees fit and to choose the legal system he prefers. We shall free the administration from centralism. The State which you have installed is a repressive State, not a State at the people's service. You do not allow the freedom to choose one's code of law. When we are in power a Muslim will be able to get married before the mufti, if he wishes, and a Christian will be able to marry in church, if he prefers."

- The plurality of legal systems advocated by Mr Erbakan in his speeches had its origin in the practice introduced in the first years of Islam by the "Medina Agreement", which had given the Jewish and polytheist communities the right to live according to their own legal systems, not according to Islamic law. On the basis of the Medina Agreement some Islamist thinkers and politicians had proposed a model of peaceful co-existence under which each religious group would be free to choose its own legal system. Since the foundation of the Nizam party in 1970 (dissolved by the Decree of 2 May 1971) Mr Erbakan had been seeking to replace the single legal system with a plurality of legal systems and thus destroy legislative and judicial unity, which were preconditions for secularism and the consciousness of nationhood.

- In addition, Mr Erbakan had made a speech on 13 April 1994 to the Refah group in parliament in which he had advocated setting up a theocratic regime, if necessary through force:

> "The second important point is this: Refah will come to power and a just [social] order (*adil düzen*) will be established. The question we must ask ourselves is whether this change will be violent or peaceful; whether it will entail bloodshed. I would have preferred not to use those terms, but in the face of all that, in the face of terrorism, and so that everyone can see the true situation clearly, I feel obliged to do so. Today Turkey must take a decision. The Welfare Party will establish a just order, that is certain. [But] will the transition be peaceful or violent; will it be achieved harmoniously or by bloodshed? The sixty million [citizens] must make up their minds on that point."

- The reception given by Necmettin Erbakan at the Prime Minister's residence to the leaders of the various religious movements, who had attended in vestments denoting their religious allegiance, clearly evidenced Refah's chairman's support for these religious groups *vis-à-vis* public opinion.

- In a public speech in April 1994 Şevki Yılmaz, MP for the province of Rize, had issued a clear call to wage a holy war (jihad) and had argued for the introduction of Islamic law, making the following declaration:

> "We shall certainly call to account those who turn their backs on the precepts of the Koran and those who deprive Allah's messenger of his jurisdiction in their country."

In another public speech, also in April 1994, Şevki Yılmaz had said:

> "In the hereafter you will be summoned with the leaders you have chosen in this life. ... Have you considered to what extent the Koran is applied in this country? I have done the sums. Only 39% [of the rules] in the Koran are applied in this country. Six thousand five hundred verses have been quietly forgotten ... You found a Koranic school, you build a hostel, you pay for a child's education, you teach, you preach. ... None of that is part of the chapter on jihad but of that on the *amel-i salih* (peacetime activities). Jihad is the name given to the quest for power for the advent of justice, for the propagation of justice and for glorification of Allah's Word. Allah did not see that task as an abstract political concept; he made it a requirement for warriors (*cahudi*). What does that mean? That jihad must be waged by an army! The commander is identified... The condition to be met before prayer (*namaz*) is the islamisation of

power. Allah says that, before mosques, it is the path of power which must be Muslim... It is not erecting vaulted ceilings in the places of prayer which will lead you to Paradise. For Allah does not ask whether you have built up vaulted ceilings in this country. He will not ask that. He will ask you if you have reached a sufficient level ... today, if Muslims have a hundred books, they must give thirty to the Koranic schools, to train our children, girls and boys, and the sixty remaining books must be given to the political establishments which open the road to power. Allah asked all his prophets to fight for power. You cannot name a single member of a religious movement who does not fight for power. I tell you, if I had as many heads as I have hairs on my head, even if each of those heads were to be torn from my shoulders for following the way of the Koran, I would not abandon my cause... The question Allah will ask you is this: 'Why, in the time of the blasphemous regime, did you not work for the construction of an Islamic State?' Erbakan and his friends want to bring Islam to this country in the form of a political party. The prosecutor understood that clearly. If we could understand that as he did, the problem would be solved. Even Abraham the Jew has realised that in this country the symbol of Islam is Refah. He who incites the Muslim community (*cemaat*) to take up arms before political power is in Muslim hands is a fool, or a traitor doing the bidding of others. For none of the prophets authorised war before the capture of State power. ... Muslims are intelligent. They do not reveal how they intend to beat their enemy. The general staff gives orders and the soldiers obey. If the general staff reveals its plan, it is up to the commanders of the Muslim community to make a new plan. Our mission is not to talk, but to apply the war plan, as soldiers in the army..."

Criminal proceedings had been brought against Şevki Yılmaz. Although his antipathy to secularism was well-known, Refah had adopted him as a candidate in local-government elections. After he had been elected mayor of Rize, Refah had made sure that he was elected as an MP in the Turkish Grand National Assembly.

- In a public speech on 14 March 1993 and a television interview first recorded in 1992 and rebroadcast on 24 November 1996, Hasan Hüseyin Ceylan, Refah MP for the province of Ankara, had encouraged discrimination between believers and non-believers and had predicted that if the supporters of applying sharia came to power they would annihilate non-believers:

"Our homeland belongs to us, but not the regime, dear brothers. The regime and Kemalism belong to others. ... Turkey will be destroyed, gentlemen. People say: Could Turkey become like Algeria? Just as, in Algeria, we got 81% [of the votes], here too we will reach 81%, we will not remain on 20%. Do not waste your energy on us– I am speaking here to you, to those ... of the imperialist West, the colonising West, the wild West, to those who, in order to unite with the rest of the world, become the enemies of honour and modesty, those who lower themselves to the level of dogs, of puppies, in order to imitate the West, to the extent of putting dogs between the legs of Muslim women – it is to you I speak when I say: 'Do not waste your energy on us, you will die at the hands of the people of Kırıkkale.'".

"... the army says: 'We can accept it if you're a supporter of the PKK, but a supporter of sharia, never.' Well you won't solve the problem with that attitude. If you want the solution, it's sharia."

Refah had ensured that Ceylan was elected as an MP and its local branches had played videotapes of this speech and the interview.

- Refah's vice-chairman, Ahmet Tekdal, in a speech he made in 1993 while on pilgrimage in Saudi Arabia which was shown by a Turkish television station had said that he advocated installing a regime based on sharia:

> "In countries which have a parliamentary regime, if the people are not sufficiently aware, if they do not work hard enough to bring about the advent of '*hak nizami*' [a just order or God's order], two calamities lie ahead. The first calamity is the renegades they will have to face. They will be tyrannised by them and will eventually disappear. The second calamity is that they will not be able to give a satisfactory account of themselves to Allah, as they will not have worked to establish '*hak nizami*'. And so they will likewise perish. Venerable brothers, our duty is to do what is necessary to introduce the system of justice, taking all these subtleties into consideration. The political apparatus which seeks to establish '*hak nizami*' in Turkey is the Welfare Party."

- On 10 November 1996 the governor of Kayseri province, Şükrü Karatepe, had urged the population to renounce secularism and asked his audience to "keep their hatred alive" until the regime was changed, in the following terms:

> "The dominant forces say 'either you live as we do or we will sow discord and corruption among you'. So even Welfare Party Ministers dare not reveal their world-outlook inside their Ministries. This morning I too attended a ceremony in my official capacity. When you see me dressed up like this in all this finery, don't think it's because I'm a supporter of secularism. In this period when our beliefs are not respected, and indeed are blasphemed against, I have had to attend these ceremonies in spite of myself. The Prime Minister, other Ministers and MPs have certain obligations. But you have no obligations. this system must change. We have waited, we will wait a little longer. Let us see what the future has in store for us. And let Muslims keep alive the resentment, rancour and hatred they feel in their hearts."

Mr Karatepe had been convicted of inciting the people to hatred on the ground of religion.

- On 8 May 1997 İbrahim Halil Çelik, Refah MP for the province of Şanlıurfa, had spoken in parliament in favour of the establishment of a regime based on sharia and approving acts of violence like those which were taking place in Algeria:

> "If you attempt to close down the "*İmam-Hatip*" theological colleges while the Welfare Party is in government, blood will flow. It would be worse than in Algeria. I too would like blood to flow. That's how democracy will be installed. And it will be a beautiful thing. The army has not been able to deal with 3,500 members of the PKK. How would it see off six million Islamists? If they piss into the wind they'll get their faces wet. If anyone attacks me I will strike back. I will fight to the end to introduce sharia."

Çelik had been expelled from the party one month after the application for dissolution had been lodged. His exclusion was probably only an attempt to evade the penalty in question.

- Refah's vice-chairman, the Minister of Justice, Şevket Kazan, had visited a person detained pending trial for activities contrary to the principle of secularism, thus publicly lending him his support as a Minister.

26. On the basis of the evidence adduced on 7 July 1997 by Principal State Counsel's office, the Constitutional Court held that the following further evidence confirmed that Refah was a centre of activities contrary to the principle of secularism:

- In a public speech on 7 May 1996 Necmettin Erbakan had emphasised the importance of television as an instrument of propaganda in the holy war being waged in order to establish Islamic order:

> "... A State without television is not a State. If today, with your leadership, you wished to create a State, if you wanted to set up a television station, you would not even be able to broadcast for more than twenty-four hours. Do you believe it is as easy as that to create a State? That's what I told them ten years ago. I remember it now. Because today people who have beliefs, an audience and a certain vision of the world, have a television station of their own, thanks be to God. It is a great event.
>
> Conscience, the fact that the television [channel] has the same conscience in all its programmes, and that the whole is harmonious, is very important. A cause cannot be fought for without [the support of] television. Besides, today we can say that television plays the role of artillery or an air force in the jihad, that is the war for domination of the people ... it would be unthinkable to send a soldier to occupy a hill before those forces had shelled or bombed it. That is why the jihad of today cannot be waged without television. So, for something so vital, sacrifices must be made. What difference does it make if we sacrifice money? Death is close to all of us. When everything is black, after death, if you want something to show you the way, that something is the money you give today, with conviction, for Channel 7 (*Kanal 7*). It was to remind you of that that I shared my memories with you.
>
> ... That is why, from now on, with that conviction, we will truly make every sacrifice, until it hurts. May those who contribute, with conviction, to the supremacy of [Allah] be happy. May Allah bless you all, and may He grant Channel 7 even more success. Greetings."

- By a decree of 13 January 1997 the cabinet (in which the Refah members formed a majority) had reorganised working hours in public establishments to make allowances for fasting during Ramadan. The Supreme Administrative Court had annulled this decree on the ground that it undermined the principle of secularism.

27. The Constitutional Court observed that it had taken into consideration international human-rights-protection instruments, including the Convention. It also referred to the restrictions authorised by the second paragraph of Article 11 and Article 17 of the Convention. It pointed out in that context that Refah's leaders and members were using democratic rights and freedoms with a view to replacing the democratic order with a system based on sharia. It held that where a political party pursued activities aimed at bringing the democratic order to an end and used its freedom of

expression to issue calls to action to achieve that aim, the Constitution and supranational human-rights-protection rules authorised its dissolution.

28. The Constitutional Court observed that the public statements of Refah's leaders, namely those of Necmettin Erbakan, Şevket Kazan and Ahmet Tekdal, had directly engaged Refah's responsibility with regard to the constitutionality of its activities. It further observed that the public statements made by MPs Şevki Yılmaz, Hasan Hüseyin Ceylan and İbrahim Halil Çelik had likewise engaged the party's responsibility since it had not reacted to them in any way or sought to distance itself from them, or at least not before the commencement of the dissolution proceedings.

29. As an additional penalty, the Constitutional Court decided to strip Necmettin Erbakan, Şevket Kazan, Ahmet Tekdal, Şevki Yılmaz, Hasan Hüseyin Ceylan and İbrahim Halil Çelik of MP status, in accordance with Article 84 of the Constitution. It found that these persons, by their words and deeds, had caused Refah's dissolution. The Constitutional Court also banned them for five years from becoming founder members, ordinary members, leaders or auditors of any other political party, pursuant to Article 69 § 8 of the Constitution.

30. Judges Haşim Kılıc and Sacit Adalı expressed dissenting opinions stating, *inter alia*, that in their view the dissolution of Refah was not compatible either with the provisions of the Convention or with the case-law of the European Court of Human Rights on the dissolution of political parties. They observed that political parties which did not support the use of violence should be able to take part in political life and that in a pluralist system there should be room for debate about ideas thought to be disturbing or even shocking.

31. This judgment was published in the Official Gazette on 22 February 1998.

II. RELEVANT DOMESTIC LAW

A. The Constitution

32. The relevant provisions of the Constitution read as follows:

Article 2

"The Republic of Turkey is a democratic, secular and social State based on the rule of law, respectful of human rights in a spirit of social peace, national solidarity and justice, adhering to the nationalism of Atatürk and resting on the fundamental principles set out in the Preamble."

Article 4

"No amendment may be made or proposed to the provisions of Article 1 of the Constitution providing that the State shall be a Republic, the provisions of Article 2 concerning the characteristics of the Republic or the provisions of Article 3."

Article 6

"Sovereignty resides unconditionally and unreservedly in the nation. ... Sovereign power shall not under any circumstances be transferred to an individual, a group or a social class. ..."

Article 10 § 1

"All individuals shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds."

Article 14 § 1

"None of the rights and freedoms referred to in the Constitution shall be exercised with a view to undermining the territorial integrity of the State and the unity of the nation, jeopardising the existence of the Turkish State or Republic, abolishing fundamental rights and freedoms, placing the control of the State in the hands of a single individual or group, ensuring the domination of one social class over other social classes, introducing discrimination on the grounds of language, race, religion or membership of a religious sect, or establishing by any other means a political system based on such concepts and opinions."

Article 24 § 4

"No one may exploit or abuse religion, religious feelings or things held sacred by religion in any manner whatsoever with a view to causing the social, economic, political or legal order of the State to be based on religious precepts, even if only in part, or for the purpose of securing political or personal interest or influence thereby."

Article 68 § 4

"The constitutions, rulebooks and activities of political parties shall not be incompatible with the independence of the State, the integrity of State territory and of the nation, human rights, the principles of equality and the rule of law, national sovereignty or the principles of a democratic, secular Republic. No political party may be founded with the aim of advocating and establishing the domination of one social class or group, or a dictatorship in any form whatsoever. ..."

Article 69 § 4

"... The Constitutional Court shall give a final ruling on the dissolution of political parties on an application by Principal State Counsel at the Court of Cassation."

Article 69 § 6

"... A political party may not be dissolved on account of activities contrary to the provisions of Article 68 § 4 unless the Constitutional Court has held that the political party concerned constitutes a centre of such activities."

Article 69 § 8

"... Members and leaders whose declarations and activities lead to the dissolution of a political party may not be founder members, leaders or auditors of another political party for a period of five years from the date on which the reasoned decision to dissolve the party is published in the Official Gazette..."

Article 84

"Forfeiture of the status of member

Where the Council of the Presidency of the Grand National Assembly has validated the resignation of members of parliament, the loss of their status as members shall be decided by the Grand National Assembly in plenary session.

A convicted member of parliament shall not forfeit the status of member until the court which convicted him has notified the plenary Assembly of the final judgment.

A member of parliament who continues to hold an office or carry on an activity incompatible with the status of member, within the meaning of Article 82, shall forfeit that status after a secret ballot of the plenary Assembly held in the light of the relevant committee's report showing that the member concerned holds or carries on the office or activity in question.

Where the Council of the Presidency of the Grand National Assembly notes that a member of parliament, without valid authorisation or excuse, has failed, for a total of five days in one month, to take part in the work of the Assembly, that member shall forfeit the status of member where by majority vote the plenary Assembly so decides.

The term of office of a member of parliament whose words and deeds have, according to the Constitutional Court's judgment, led to the dissolution of his party, shall end on the date when that judgment is published in the Official Gazette. The Presidency of the Grand National Assembly shall enforce that part of the judgment and inform the plenary Assembly accordingly."

B. Law no. 2820 on the regulation of political parties

33. The relevant provisions of Law no. 2820 on the regulation of political parties read as follows:

Section 78

"Political parties

(a) shall not aim or strive to or incite third parties to ... jeopardise the existence of the Turkish State and Republic, abolish fundamental rights and freedoms, introduce discrimination on grounds of language, race, colour, religion or membership of a religious sect, or establish, by any means, a system of government based on any such notion or concept. ..."

Section 90(1)

"The constitution, programme and activities of political parties shall not contravene the Constitution or this Law."

Section 101

"The Constitutional Court shall dissolve a political party

...

(b) where its general meeting, central office or executive committee ... takes a decision, issues a circular or makes a statement ... contrary to the provisions of Chapter 4 of this Law, or where the Chairman, Vice-Chairman or General Secretary makes any written or oral statement contrary to those provisions.

...

(d) Where acts contrary to the provisions of Chapter 4 of this Law have been committed by organs, authorities or councils other than those mentioned in sub-section I(b), State Counsel shall, within two years of the act concerned, require the party in writing to disband those organs and/or authorities and/or councils. State counsel shall [likewise] require, in writing, the permanent exclusion from the party of those members who have been convicted for committing acts or making statements which contravene the provisions of Chapter 4.[1]

State counsel shall lodge an application for the dissolution of any political party which fails to comply with the instructions in his letter within thirty days of its service. If, within thirty days of notification of the application for dissolution lodged by State Counsel, the party disbands the organ, authority or council concerned, or permanently excludes the member or members in question, the dissolution proceedings shall lapse.

1. Chapter 4 of Law no. 2820, referred to in section 101, includes in particular section 90(1), which is reproduced above.

If not, the Constitutional Court shall consider the case on the basis of the file and shall adjudicate after hearing, if necessary, the oral submissions of State Counsel, the representatives of the political party and all those capable of providing information about the case...”

Section 103

“Where it is found that a political party has become a centre of activities contrary to the provisions of sections 78 to 88 and section 97 of the present Law, the party shall be dissolved by the Constitutional Court.”[1]

Section 107(1)

“All the assets of political parties dissolved by order of the Constitutional Court shall be transferred to the Treasury.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

34. The applicants alleged that Refah’s dissolution and the prohibition barring its leaders – including Mr Erbakan, Mr Yılmaz and Mr Tekdal – from holding similar office in any other political party had infringed their right to freedom of association, guaranteed by Article 11 of the Convention, the relevant parts of which provide:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime ... or for the protection of the rights and freedoms of others...”

1. Paragraph 2 of section 103, which the Constitutional Court declared unconstitutional on 9 January 1998, prescribed the use of the procedure laid down in section 101 (d) for determination of the question whether a political party had become a centre of activities contrary to the Constitution.

A. Whether there was an interference

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

B. Whether the interference was justified

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

1. "Prescribed by law"

37. The applicants submitted that the criteria applied by the Constitutional Court in order to establish that Refah had become a centre of unconstitutional activities were broader than those laid down by the Law on the regulation of political parties, the relevant provisions of which had been repealed on the same day as Refah's dissolution. Apart from those points of domestic law, the applicants did not contest the lawfulness of the dissolution proceedings under Turkish law, since the possibility of dissolution was provided for in the Constitution.

38. The Government submitted that Refah's dissolution was a measure provided for in the Constitution.

39. The Court notes that the Government and the applicants (in their written observations of 17 November 1999 and their oral observations of 16 January 2001) agreed that the interference concerned was "prescribed by law", the measures imposed by the Constitutional Court being based on Articles 68, 69 and 84 of the Constitution and sections 101 and 107 of Law no. 2820 on the regulation of political parties. It sees no reason to disagree with the parties' assessment of this point.

2. Legitimate aim

40. The Government submitted that the interference complained of pursued several legitimate aims, namely protection of public safety, national security and the rights and freedoms of others and the prevention of crime.

41. The applicants accepted in principle that protection of public safety and the rights and freedoms of others and the prevention of crime might depend on safeguarding the principle of secularism. They observed that in the present case the Constitutional Court had based its judgment on the statements of politicians who had been legitimately elected in democratic

elections and whose views had been expressed mainly at a time when they had parliamentary privilege.

42. Taking into account the importance of the principle of secularism for the democratic system in Turkey, the Court considers that Refah's dissolution pursued a number of the legitimate aims listed in Article 11, namely protection of national security and public safety, prevention of disorder or crime and protection of the rights and freedoms of others.

3. "Necessary in a democratic society"

(a) General principles

43. The European Convention on Human Rights must be understood and interpreted as a whole. Human rights form an integrated system for the protection of human dignity; in that connection, democracy and the rule of law have a key role to play.

Democracy requires that the people should be given a role. Only institutions created by and for the people may be vested with the powers and authority of the State; statute law must be interpreted and applied by an independent judicial power. There can be no democracy where the people of a State, even by a majority decision, waive their legislative and judicial powers in favour of an entity which is not responsible to the people it governs, whether it is secular or religious.

The rule of law means that all human beings are equal before the law, in their rights as in their duties. However, legislation must take account of differences, provided that distinctions between people and situations have an objective and reasonable justification, pursue a legitimate aim and are proportionate and consistent with the principles normally upheld by democratic societies. But the rule of law cannot be said to govern a secular society when groups of persons are discriminated against solely on the ground that they are of a different sex or have different political or religious beliefs. Nor is the rule of law upheld where entirely different legal systems are created for such groups.

There is a very close link between the rule of law and democracy. As it is the function of written law to establish distinctions on the basis of relevant differences, the rule of law cannot be sustained over a long period if persons governed by the same laws do not have the last word on the subject of their content and implementation.

44. The Court further reiterates that, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy.

There can be no democracy without pluralism. It is for that reason that freedom of expression as enshrined in Article 10 is applicable, subject to paragraph 2, not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, among many other authorities, the Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 23, § 49, and the Jersild v. Denmark judgment of 23 September 1994, Series A no. 298, p. 26, § 37). The fact that their activities form part of a collective exercise of the freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention (see the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 17, §§ 42 and 43).

45. As to the links between democracy and the Convention, the Court has made the following observations (see, among other authorities, the United Communist Party of Turkey and Others judgment, cited above, pp. 21-22, § 45):

> "Democracy is without doubt a fundamental feature of the 'European public order'... That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights... The Preamble goes on to affirm that European countries have a common heritage of political tradition, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society...
>
> In addition, Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is 'necessary in a democratic society'. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from 'democratic society'. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it."

46. The Court has also determined the limits within which political groups may conduct their activities while enjoying the protection of the Convention's provisions (see the United Communist Party of Turkey and Others judgment, cited above, p. 27, § 57):

> "... one of the principal characteristics of democracy [is] the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned."

47. The Court takes the view that a political party may campaign for a change in the law or the legal and constitutional basis of the State on two conditions: (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 against penalties imposed for those reasons (see, *mutatis mutandis*, the Socialist Party and Others v. Turkey judgment of 25 May 1998, *Reports* 1998-III, pp. 1256-57, §§ 46 and 47, and the Lawless v. Ireland judgment of 1 July 1961 (*merits*), Series A no. 3, pp. 45-46, § 7).

48. Nor can it be ruled out that the programme of a political party or the statements of its leaders may conceal objectives and intentions different from those they proclaim. To verify that it does not, the content of the programme or statements must be compared with the actions of the party and its leaders and the positions they defend taken as a whole (see the previously cited judgments in the cases of United Communist Party of Turkey and Others, p. 27, § 58, and Socialist Party and Others, pp. 1257-58, § 48).

49. Moreover, the Court reiterates that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see the Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31; and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

50. The Court has pointed out that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see the previously cited Kokkinakis judgment, p. 18, § 33).

51. The State's role as the neutral and impartial organiser of the practising of the various religions, denominations and beliefs is conducive to religious harmony and tolerance in a democratic society (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 84, ECHR 2000-VII). For example, in a democratic society, the freedom to manifest a religion may be restricted in order to ensure the neutrality of the

public education service, an objective contributing to protection of the rights of others, order and public safety (see *Dahlab v. Switzerland* (dec.), no. 42393/98, 15 February 2001, to be published in the Court's official reports). Similarly, measures taken in secular universities to ensure that certain fundamentalist religious movements do not disturb public order or undermine the beliefs of others do not constitute violations of Article 9 (see Karaduman v. Turkey, application no. 16278/90, Commission decision of 3 May 1993, Decisions and Reports (DR) 74, p. 93). The Court has likewise held that preventing a Muslim opponent of the Algerian Government from spreading propaganda within Swiss territory was necessary in a democratic society for the protection of national security and public safety (see *Zaoui v. Switzerland*, (dec.), no. 41615/98, 18 January 2001, unreported)

52. The Convention institutions have also taken the view that the principle of secularism in Turkey is undoubtedly one of the fundamental principles of the State, which are in harmony with the rule of law and respect for human rights. Any conduct which fails to respect that principle cannot be accepted as being part of the freedom to manifest one's religion and is not protected by Article 9 of the Convention (see the opinion of the Commission in the case of Kalaç v. Turkey expressed in its report of 27 February 1996, *Reports* 1997-IV, p. 1215, § 44, and, *mutatis mutandis*, the Kalaç v. Turkey judgment of 1 July 1997, *Reports* 1997-IV, p. 1209, §§ 27-31).

53. Moreover, for the purpose of determining whether an interference is necessary in a democratic society, the adjective "necessary", within the meaning of Article 11 § 2, implies the existence of a "pressing social need".

The Court's task is not to take the place of the competent national authorities but rather to review under Article 11 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it is "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, *mutatis mutandis*, the Ahmed and Others v. the United Kingdom judgment of 2 September 1998, *Reports* 1998-VI, pp. 2377-78, § 55, and the Goodwin v. the United Kingdom judgment of 27 March 1996, *Reports* 1996-II, pp. 500-501, § 40).

(b) Application to the present case

(i) Arguments of those appearing before the Court

(α) The applicants

54. The applicants submitted that they did not challenge the vital importance of the principle of secularism for the Republic of Turkey and Turkish society as a whole. They observed that this principle was explicitly set out in Refah's programme and accordingly rejected the accusations accepted by the Constitutional Court to the effect that the statements of the party's leaders had failed to respect it. They alleged that the Government had cited isolated remarks alleged to have been made by them, taking these completely out of context, usually from longer speeches. They further alleged that the Government had relied on remarks which had not been cited by the Constitutional Court when it dissolved Refah and that the Government had attempted to establish links between the statements concerned and events which had preceded them.

55. The applicants observed that Refah had been founded in 1983 and had been in power perfectly legally for one year, from June 1996 to July 1997. The second applicant, Mr Erbakan, had been Prime Minister during the same period. The joint programme for government which Refah had drawn up together with the True Path Party (*Doğru Yol*) had stated that the coalition between the two parties had been facilitated by "the fact that Turkey is a civil, democratic, secular and social State" and by "Kemalist principles". Not only had the joint programme not contained any call to violence or expressed the intention of modifying Turkey's State or political structure in any way, but it had proposed improving safeguards for fundamental rights and freedoms and democratic rules. The applicants submitted that although, from a reform perspective, Refah had criticised certain implications of the principle of secularism in Turkey in the name of respect for freedom of conscience and freedom of expression, it had never advocated abandoning the principle itself or the Turkish constitutional order in general. Moreover, the concept of secularism as applied in Turkey was the subject of domestic debate and had drawn criticism from high-ranking judicial authorities, who were the defenders of human rights. The applicants pointed out that the opposition in parliament had accused the government of anti-secular acts, forcing a vote of no-confidence on the issue which they had lost on 20 May 1997, a few weeks before Refah's dissolution.

56. The applicants submitted that the freedom of expression of the three applicants other than Refah had been infringed by their forfeiture of MP status on account of the remarks which had caused Refah's dissolution. As the Government accepted, these remarks had been made within the precincts of parliament and in the debating chamber itself. In the like case an MP not

belonging to any political party would enjoy a stronger safeguard than an MP who did belong to one, since he would not run the risk of being forbidden to engage in any political activity on account of words spoken within the precincts of parliament.

57. The applicants submitted that there was a contradiction between Principal State Counsel's arguments concerning the criminal nature of the applicants' remarks and the Government's submission that Refah's dissolution was not linked to criminal offences committed by its members. Moreover, the reason why Refah had not imposed disciplinary sanctions on those of its MPs who had been convicted of criminal offences was that they had made the offending remarks before they joined the party. The applicants had never been prosecuted for any of the statements subsequently cited by the Constitutional Court as grounds for dissolving Refah. They therefore maintained that the Government could not establish that the Constitutional Court had made an acceptable assessment of the relevant facts and that they had not specified what pressing social need could have justified Refah's dissolution.

58. The applicants further submitted that the real reasons for Refah's dissolution lay in the fact that major Turkish companies wanted to prevent it from pursuing its policy of opposing State borrowing from those companies and thought that Refah's economic policy, although beneficial to Turkey, went against their interests. The companies concerned had denigrated Refah through the press organs at their disposal and had used the bureaucracy to secure its dissolution.

(β) The Government

59. The Government observed at the outset that the principle of secularism was a precondition for a pluralist, liberal democracy. A State which adhered to the principle of secularism was a political community which refused to organise society according to religious precepts. In such a community the State kept an equal distance from all religions and beliefs. Moreover, there were certain circumstances which made the principle of secularism particularly important for Turkey in relation to other democracies. The Republic of Turkey had been founded as a result of a revolutionary process which had changed a theocratic State into a secular State, and reactionary Islamic tendencies were still a danger in the present day. Political Islam did not confine itself to the private sphere of relations between the individual and God but also asserted the right to organise the State and the community. In so doing, it showed the characteristics of a totalitarian regime. In order to attain its ultimate goal of replacing the existing legal order with sharia, political Islam used the method known as "*takiyye*", which consisted in hiding its beliefs until it had attained that goal.

60. The Government further observed that the Turkish population was more than 95% Muslim and that the abusive use of religious ideas by

politicians was a threat to, and a potential danger for, Turkish democracy. The countries where Islamic fundamentalism was dominant considered Turkey, the only country in the world which was both Muslim and democratic, to be dangerous for their regimes and tried to export their theocratic regimes to Turkey; to that end they provided moral and financial support to fundamentalist movements. Moreover, an anti-secular movement was developing among Turkish citizens living abroad and Refah did not hesitate to call them to wage holy war, through the organisations close to it.

61. In the Government's submission, the fact that Turkey was the only Muslim country where there was a liberal democracy after the Western model was due to the strict application of the principle of secularism there. Protection of the secular State in Turkey was an essential condition for application of the Convention. In that connection, the Government pointed out that political Islam, although tolerant of other religions, had never shown the same tolerance for its own faithful throughout the course of history. The sharia provisions concerning, among other matters, criminal law, corporal punishment as a criminal penalty and the status of women were not compatible with the Convention.

62. The Government asserted that, when confronted with the risk which political Islam represented for a democratic regime based on human rights, that regime was entitled to take measures to protect itself from the danger. "Militant democracy", in other words a democratic system which defended itself against all political movements which sought to destroy it, had been born as a result of the experience of Germany and Italy between the wars with fascism and national-socialism, two movements which had come to power after more or less free elections. In the Government's submission, militant democracy required political parties, its indispensable protagonists, to show loyalty to democratic principles, and accordingly to the principle of secularism. The concept of militant democracy and the possibility of repressing political groups which abused freedom of association and freedom of expression were set forth in the Constitutions of European States (for example, in Article 18 and Provisional Article XII of the Italian Constitution and Articles 9 § 2, 18 and 21 § 2 of the German Basic Law). That tendency was confirmed also by the European Parliament's Resolution of 10 December 1996 on the constitutional status of European political parties, according to which the programme and activities of political parties must respect democracy, human rights and the fundamental constitutional principles of the rule of law enshrined in the Union Treaty. In support of their argument, the Government also referred to the Commission's decision declaring inadmissible the application lodged by the German Communist Party (application no. 250/57, decision of 20 July 1957, Yearbook 1, p. 222).

63. Referring to the speeches made by several of Refah's leaders cited by the Constitutional Court as grounds for dissolving the party, the

Government submitted that Refah had "an actively aggressive and belligerent attitude to the established order" and was making "a concerted attempt to prevent it from functioning properly" so that it could then destroy it. The offending speeches were calls to a popular uprising and the use of force and contained elements of incitement to the most generalised and absolute violence which characterised any "holy war". That being the case, the party's dissolution had been a preventive measure to protect democracy. On that point, the Government asserted that the measure in question could be taken in conjunction with a criminal penalty imposed on those who had made the offending remarks or separately, without prosecution of the persons concerned. Whereas MPs enjoyed immunity from prosecution for their words in parliament, political parties did not enjoy similar immunity as regards the constitutionality of their activities.

In those circumstances, Refah's dissolution had to be regarded, in the Government's submission, as a pressing need for the survival of democracy.

(ii) The Court's assessment

64. In the present case, the Court's task is to assess whether Refah's dissolution and the accessory penalties imposed on the other applicants met a "pressing social need" and whether they were "proportionate to the legitimate aims pursued".

65. As regards the existence of a "pressing social need", the Court notes at the outset that the Constitutional Court devoted a large part of its judgment to emphasising the essential role of the principle of secularism in maintaining and protecting democracy in Turkey. The parties agreed before the Court that preserving secularism is necessary for protection of the democratic system in Turkey. However, they did not agree about the content, interpretation and application of the principle of secularism.

But interpretation of that principle, which underlies all of the grounds for dissolution, was based, according to the Constitutional Court, on the context of the history of Turkish law. It pointed out that Turkish society had undergone the experience of a theocratic political regime during the Ottoman Empire and that it had founded the secular republican regime in Turkey by putting an end to theocracy. The Court accordingly finds, at this stage of its examination, that the establishment of a theocratic regime, with rules valid in the sphere of public law as well as that of private law, is not completely inconceivable in Turkey, account being taken, firstly, of its relatively recent history and, secondly, of the fact that the great majority of its population are Muslims.

66. The point at issue between the parties before the Court mainly concerns the question whether Refah had become a "centre of anti-secular activities" and a political group aiming at the installation of a theocratic regime.

67. The Court observes in that connection that Refah was dissolved on account of the declarations and policy statements made by its chairman and its members. Its constitution and programme did not have any part to play in the decision. Like the national authorities, the Court will therefore base its assessment of the necessity of the interference complained of on those declarations and policy statements.

68. The Court considers on this point that, among the grounds for dissolution put forward by Principal State Counsel at the Court of Cassation, those cited by the Constitutional Court as grounds for its finding that Refah had infringed the principle of secularism can be classified in three main categories: (i) those which tended to show that Refah intended to set up a plurality of legal systems, introducing discrimination on the grounds of belief; (ii) those which tended to show that Refah wanted to apply sharia to the Muslim community; and (iii) those based on references made by Refah members to jihad (holy war) as a political method. The Court can therefore limit its examination to these three groups of arguments which were upheld by the Constitutional Court.

69. In support of the first group of grounds for dissolution, concerning the proposed plurality of legal systems, the Constitutional Court cited various statements made by the applicant N. Erbakan, Refah's chairman, who had said in his speech of 23 March 1993: "There must be several legal systems. ... Moreover, that has always been the case throughout our history ... there have been various religious movements. Everyone lived according to the legal rules of his own organisation, and so everyone lived in peace...", "We shall free the administration from centralism. The State which you have installed is a repressive State ... You do not allow the freedom to choose one's code of law" (see paragraph 25 above). The Constitutional Court found that Refah's intention had been to set up in Turkey a plurality of legal systems under which society would have to be divided into several religious movements; each individual would have to choose the movement to which he wished to belong and would thus be subjected to the rights and obligations prescribed by the religion of his community. The Constitutional Court pointed out that such a system, whose origins lay in the history of Islam as a political regime, was inimical to the consciousness of allegiance to a nation having legislative and judicial unity. It would naturally impair judicial unity since each religious movement would set up its own courts and the ordinary courts would be obliged to apply the law according to the religion of those appearing before them, thus obliging the latter to reveal their beliefs. It would also undermine legislative unity, given that each religious movement would be empowered to decree what legal rules should be applicable to its members.

70. Like the Government, the Court considers that Refah's proposal that there should be a plurality of legal systems would introduce into all legal relationships a distinction between individuals grounded on religion, would

categorise everyone according to his religious beliefs and would allow him rights and freedoms not as an individual but according to his allegiance to a religious movement.

The Court takes the view that such a societal model cannot be considered compatible with the Convention system, for two reasons.

Firstly, it would do away with the State's role as the guarantor of individual rights and freedoms and the impartial organiser of the practice of the various beliefs and religions in a democratic society, since it would oblige individuals to obey, not rules laid down by the State in the exercise of its above-mentioned functions, but static rules of law imposed by the religion concerned. But the State has a positive obligation to ensure that everyone within its jurisdiction enjoys in full, and without being able to waive them, the rights and freedoms guaranteed by the Convention (see, *mutatis mutandis*, the Airey v. Ireland judgment of 9 October 1979, Series A no. 32, p. 14, § 25).

Secondly, such a system would undeniably infringe the principle of non-discrimination between individuals as regards their enjoyment of public freedoms, which is one of the fundamental principles of democracy. A difference in treatment between individuals in all fields of public and private law according to their religion or beliefs manifestly cannot be justified under the Convention, and more particularly Article 14 thereof, which prohibits discrimination. Such a difference in treatment cannot maintain a fair balance between, on the one hand, the claims of certain religious groups who wish to be governed by their own rules and on the other the interest of society as a whole, which must be based on peace and on tolerance between the various religions and beliefs (see, *mutatis mutandis*, the judgment of 23 July 1968 in the "Belgian linguistic" case, Series A no. 6, pp. 33-35, §§ 9 and 10, and the Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment, Series A no. 94, pp. 35-36, § 72).

71. With regard to the second group of grounds for dissolution, the Constitutional Court found that Refah intended to introduce sharia (Islamic law) as the ordinary law and as the law applicable to the Muslim community. It held that sharia was the antithesis of democracy in that it was based on dogmatic values and was the opposite of the supremacy of reason and of the concepts of freedom, independence and the ideal of humanity developed in the light of science. A number of public speeches made by those members of Refah mentioned by the Constitutional Court had referred, sometimes in explicit terms, to the objective of a regime based on sharia. The Court takes note in particular of the following remarks by Refah members, which explicitly reveal the intention of setting up a regime inspired by sharia:

- In a television interview broadcast on 24 November 1996 Hasan Hüseyin Ceylan, MP for the province of Ankara, said that sharia was the solution for the country;

- On 8 May 1997 İbrahim Halil Çelik, a Refah MP, said: "I will fight to the end to introduce sharia." (see paragraph 25 above);

- In April 1994 Şevki Yılmaz MP said: "The question Allah will ask you is this: 'Why, in the time of the blasphemous regime, did you not work for the construction of an Islamic State?' Erbakan and his friends want to bring Islam to this country in the form of a political party. The prosecutor understood that clearly. If we could understand that as he did, the problem would be solved".

The Court further notes the following remarks, which implicitly reflect the intention of those who made them to set up a regime based on sharia:

- On 13 April 1994 Necmettin Erbakan said: "Refah will come to power and a just order (*adil düzen*) will be established" (see paragraph 25 above), and in a speech on 7 May 1996 he praised "those who contribute, with conviction, to the supremacy of Allah" (see paragraph 26 above);

- In April 1994 Şevki Yılmaz, MP for the province of Rize, proposed that the faithful should "call to account those who turn their backs on the precepts of the Koran and those who deprive Allah's messenger of his jurisdiction in their country" and asserted: "Only 39% of the rules in the Koran are applied in this country. Six thousand five hundred verses have been quietly forgotten...". He went on to say: "The condition to be met before prayer is the islamisation of power. Allah says that, before mosques, it is the path of power which must be Muslim..." (see paragraph 25 above);

- While on pilgrimage in 1993 Ahmet Tekdal said: "If the people ... do not work hard enough to bring about the advent of '*hak nizami*' [a just order or God's order], .. they will be tyrannised by [renegades] and will eventually disappear ... they will not be able to give a satisfactory account of themselves to Allah, as they will not have worked to establish '*hak nizami*'".

72. Like the Constitutional Court, the Court considers that sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it. The Court notes that, when read together, the offending statements, which contain explicit references to the introduction of sharia, are difficult to reconcile with the fundamental principles of democracy, as conceived in the Convention taken as a whole. It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts. In addition, the

statements concerning the desire to found a "just order" or the "order of justice" or "God's order", when read in their context,and even though they lend themselves to various interpretations, have as their common denominator the fact that they refer to religious or divine rules in order to define the political regime advocated by the speakers. They reveal ambiguity about those speakers' attachment to any order not based on religious rules. In the Court's view, a political party whose actions seem to be aimed at introducing sharia in a State party to the Convention can hardly be regarded as an association complying with the democratic ideal that underlies the whole of the Convention.

73. The Court also considers that, taken separately, the policy statements made by Refah's leaders, particularly on the question of Islamic headscarves or organising working hours in the public sector to accommodate prayers, and some of their acts, such as the visit of Mr Kazan, then Minister of Justice, to a member of his party charged with inciting hatred on the ground of religious discrimination, or the reception given by Mr Erbakan to the leaders of the various Islamic movements, did not constitute an imminent threat to the secular regime in Turkey. However, the Court finds persuasive the Government's argument that these acts and policy statements were consistent with Refah's unavowed aim of setting up a political regime based on sharia.

74. The third category of the grounds for dissolution cited by the Constitutional Court is that of the references by certain Refah members to the concept of jihad, whose primary meaning is a holy war, to be waged until the total domination of Islam in society is secured. The Court observes that there is likewise ambiguity in the terminology used by some speakers – Refah members – with regard to the method to be used to gain political power. Although it was not disputed before the Court that so far Refah had pursued its political ends by legitimate means, in the offending speeches its leaders alluded to the possibility of recourse to force in order to overcome various obstacles in the political route envisaged by Refah for gaining and retaining power (see the passages quoted in paragraphs 25 and 26 above).

The Court takes note of the remarks made by:

– Necmettin Erbakan, on 13 April 1994, on the question whether power would be gained by violence or by peaceful means (whether the change would involve bloodshed or not);

– Şevki Yılmaz, in April 1994, concerning his interpretation of jihad and the possibility for Muslims of arming themselves after coming to power;

– Hasan Hüseyin Ceylan, on 14 March 1992, who insulted and threatened the supporters of a regime on the Western model;

– Şükrü Karatepe, who, in his speech on 10 December 1996, advised believers to keep alive the rancour and hatred they felt in their hearts; and

– İbrahim Halil Çelik, on 8 May 1997, who said he wanted blood to flow to prevent the closure of the theological colleges.

While it is true that Refah's leaders did not, in government documents, call for the use of force and violence as a political weapon, they did not take prompt practical steps to distance themselves from those members of Refah who had publicly referred with approval to the possibility of using force against politicians who opposed them. Consequently, Refah's leaders did not dispel the ambiguity of these statements about the possibility of having recourse to violent methods in order to gain power and retain it (see, *mutatis mutandis*, the Zana v. Turkey judgment of 25 November 1997, *Reports* 1997-VII, p. 2549, § 58).

75. The Court also notes that the remarks made by Hasan Hüseyin Ceylan, MP for the province of Ankara, in his speech on 14 March 1993, videotapes of which were shown in Refah's local branches (see paragraph 25 above), revealed deep hatred for those he considered to be opponents of an Islamist regime. The Court considers in that connection that where the offending conduct reaches a high level of insult and comes close to a negation of the freedom of religion of others it loses the right to society's tolerance (see, *mutatis mutandis*, the Otto-Preminger-Institut v. Austria judgment of 20 September 1994, Series A no. 295-A, pp. 17-18, § 47).

76. The Court cannot accept the applicants' argument that the remarks cited as grounds for Refah's dissolution were taken completely out of context and were inconsistent with each other. In fact, the political statements in question, taken as a whole, suggest that Refah advocated setting up a plurality of legal systems, introducing discrimination between individuals on the ground of their religious beliefs and functioning according to different religious rules for each religious community, in which sharia would be the applicable law for the Muslim majority of the country and/or the ordinary law. In addition, they give the impression that Refah did not exclude the possibility of recourse to force in certain circumstances in order to oppose certain political programmes, or to gain power and retain it. The Court considers that such a vision of society is based on the Islamic theocratic regime which has already been imposed in the history of Turkish law. It accordingly concludes that the offending remarks and policy statements made by Refah's leaders form a whole and give a fairly clear picture of a model of State and society organised according to religious rules, which was conceived and proposed by Refah.

77. The Court further considers that Refah's political aims were neither theoretical nor illusory, but achievable, for two reasons. The first of these relates to its influence as a political party and its chances of gaining power, the only possibility for a political party to keep its promises. At the time of its dissolution Refah, with its 157 MPs, had nearly a third of the seats in the Turkish Grand National Assembly. The speeches and policy statements cited by the Constitutional Court as grounds for Refah's dissolution date from the period (1993-97) during which the party had obtained significant results in the general and local elections and was close to the spheres of

power. The second reason lies in the fact that in the past political movements based on religious fundamentalism have been able to seize political power and have had the opportunity to set up the societal model which they advocated. The Court therefore considers that the real chance Refah had to implement its political plans undeniably made the danger of those plans for public order more tangible and more immediate.

78. Nor does the Court subscribe to the applicants' argument that Refah had taken disciplinary measures against those of its members who had been convicted of criminal offences and that their remarks, some of which had been made before their election to political office, could not be attributed to Refah as a political party. It notes that although the persons who were expelled from Refah had publicly defended the various elements of a theocratic regime before and after their election, that did not prevent Refah from putting up some of them as candidates for important public office, such as the position of mayor of a large city or member of parliament, or from showing one of the offending speeches in its local branches for the political training of its members. The case file shows that until the dissolution proceedings were brought against Refah the persons who had made these speeches never had to face disciplinary action within the party for their offending conduct or public statements and that Refah had never criticised those statements. That being so, the Court considers that the decisions to expel the persons concerned were taken in the hope of avoiding Refah's dissolution and were not made freely, as the decisions of leaders of associations should be if they are to be recognised under Article 11 (see, *mutatis mutandis*, *Freedom and Deocracy Party* (ÖZDEP) *v. Turkey* [GC], no. 23885/94, § 26, ECHR 1999-VIII).

79. As to the applicants' argument that Refah's leaders had not been prosecuted or convicted of any criminal offence, the Court notes that acts contrary to the principle of secularism are no longer punishable offences in Turkey. It is also known that Refah opposed criminal penalties for such acts. The Court notes in that connection that Necmettin Erbakan clearly expressed Refah's opposition to the criminal-law provisions which made acts of this type punishable offences in a speech at a party conference on 10 October 1993, when he said: "When we were in government, for four years, the notorious Article 163 of the Persecution (Torture) Code was never applied against any child in the country" (see paragraph 26 above). In the Court's view, the applicants cannot derive argument from the fact that Refah's leaders were never convicted of acts contrary to the principle of secularism when such acts are no longer punishable offences in Turkey, a development which the applicants themselves called for and argued in favour of at the time when the law was changed (see, *mutatis mutandis*, the Pine Valley Developments Ltd and Others v. Ireland judgment of 29 November 1991, Series A no. 222, pp. 21-22, § 47, and the Kolompar v. Belgium judgment of 24 September 1992, Series A no. 235-C, p. 54, § 32).

80. As regards the applicants' argument that Refah had not proposed reform of Turkey's constitution, either in its statute or in the programme it drew up with its coalition partner, the True Path (*Doğru Yol*) Party, the Court reiterates that it cannot be ruled out that the programme of a political party may conceal objectives and intentions different from those they proclaim. To verify that it does not, the content of the programme must be compared with the actions of the party and the positions it defends (see the previously cited United Communist Party of Turkey and Others v. Turkey judgment, p. 27, § 58). In the present case it was precisely the public declarations and policy statements made by Refah's leaders that revealed objectives and intentions of their party which were not set out in its statute (see, *mutatis mutandis*, the previously cited Socialist Party and Others v. Turkey judgment, pp. 1257-58, § 48). Moreover, Refah could not have been expected to include anti-secular objectives in the coalition programme, which was a compromise reached with a political party of the centre-right.

81. Consequently, the Court considers that the penalty imposed on the applicants may reasonably be considered to have met a "pressing social need", in so far as Refah's leaders, under the pretext that they were redefining the principle of secularism, had declared their intention of setting up a plurality of legal systems and introducing Islamic law (sharia), and had adopted an ambiguous stance with regard to the use of force to gain power and retain it. It takes the view that, even though the margin of appreciation left to States must be a narrow one where the dissolution of political parties is concerned, since the pluralism of ideas and parties is itself an inherent part of democracy, a State may reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime.

82. It remains to be determined whether the interference complained of was proportionate to the legitimate aims pursued. The Court has previously held that the dissolution of a political party accompanied by a temporary ban prohibiting its leaders from exercising political responsibilities was a drastic measure and that measures of such severity might be applied only in the most serious cases (see the previously cited Socialist Party and Others v. Turkey judgment, p. 1258, § 51). In the present case it has just found that the interference in question met a "pressing social need". It should also be noted that after Refah's dissolution only five of its MPs (including the applicants) temporarily forfeited their parliamentary office and their role as leaders of a political party. The 152 remaining MPs continued to sit in parliament and pursued their political careers normally. Moreover, the applicants did not allege that Refah or its members had sustained considerable pecuniary damage on account of the transfer of their assets to the Treasury. The Court considers in that connection that the nature and severity of the interference are also factors to be taken into account when

assessing its proportionality (see, for example, *Sürek v. Turkey (No. 1)* [GC], no. 26682/95, § 64, ECHR 1999-IV).

83. Accordingly, and having regard to the albeit narrow margin of appreciation left to the national authorities in such a case (see paragraph 80 above), the Court considers that the interference complained of was not disproportionate to the legitimate aims pursued, in the light of the fact that they answered a "pressing social need" and that the grounds cited by the Constitutional Court to justify Refah's dissolution and the temporary forfeiture of certain political rights by the other applicants were "relevant and sufficient".

84. Consequently, there has been no violation of Article 11 of the Convention in this case.

II. ALLEGED VIOLATION OF ARTICLES 9, 10, 14, 17 AND 18 OF THE CONVENTION

85. The applicants further alleged the violation of Articles 9, 10, 14, 17 and 18 of the Convention. As their complaints concern the same facts as those examined under Article 11, the Court considers that it is not necessary to examine them separately.

III. ALLEGED VIOLATION OF ARTICLES 1 AND 3 OF PROTOCOL No. 1

86. The applicants further submitted that the consequences of Refah's dissolution, namely the confiscation of its assets and their transfer to the Treasury, and the ban preventing its leaders from participating in elections, had entailed breaches of Articles 1 and 3 of Protocol No. 1, which provide:

Article 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 3

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

87. The Court notes that the measures complained of by the applicants were only secondary effects of Refah's dissolution, which, as the Court has found, did not breach Article 11. Accordingly, there is no cause to examine separately the complaints in question.

FOR THESE REASONS, THE COURT

1. *Holds* by four votes to three that there has been no violation of Article 11 of the Convention;

2. *Holds* unanimously that it is not necessary to examine separately the complaints under Articles 9, 10, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1.

Done in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 31 July 2001.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Fuhrmann, Mr Loucaides and Sir Nicolas Bratza is annexed to this judgment.

J.-P.C.
S.D.

JOINT DISSENTING OPINION OF JUDGES FUHRMANN, LOUCAIDES AND Sir Nicolas BRATZA

We regret that we are unable to share the view of the majority of the Court that there has been no violation of the applicants' rights under Article 11 of the Convention in the present case. In our view the order of the Constitutional Court dissolving Refah, depriving the individual applicants of their membership of the National Assembly and prohibiting them for a period of five years from becoming a founder, member, administrator or auditor of any other political party, amounted to a disproportionate restriction on their freedom of association as guaranteed by that Article.

We note at the outset that, according to the undisputed assertion of the applicants, Refah is the fifteenth political party to have been compulsorily dissolved by the Turkish Constitutional Court in recent times. The present case is also the fourth in a succession of cases before the European Court involving such dissolution, the previous cases being those of the United Communist Party of Turkey and Others (judgment of 30 January 1998, Reports 1998-I), the Socialist Party and Others (judgment of 25 May 1998, Reports 1998-III) and the Freedom and Democracy Party (ÖZDEP) (Judgment of 8 December 1999). It is, in terms of its political significance in Turkey by far the most important of the four cases. The Communist, Socialist, and ÖZDEP Parties were not only relatively small; they were at the time of dissolution in their infancy. In the case of ÖZDEP, the proceedings to dissolve the party were brought within four months of its formation. In the case of the Communist and Socialist Parties, the dissolution proceedings were originally commenced within a fortnight of their formation. By contrast, Refah was founded in 1983 and had been in existence for nearly fourteen years before proceedings were brought to dissolve it. In that period it had, as noted in the judgment, grown to become one of the largest single political Parties in Turkey, with a claimed membership at the time of its dissolution of over 4.3 million people. In the General Election of 1995 Refah received some 22% of the total votes, winning 158 seats in the Assembly, and in the local election of November 1996 it received 35% of the total votes cast. In June 1996, as the party commanding the greatest number of seats in the Assembly, Refah formed a coalition government with the True Path Party under the premiership of its leader, Necmettin Erbakan. At the time of the commencement of the dissolution proceedings in June 1997 Refah remained the governing party in power.

Apart from the size and importance of the applicant party, there are two other major points of distinction between the present case and those which have already been the subject of judgments of the Court.

First, the grounds for dissolution. In the other three cases, the Parties were dissolved primarily on the grounds that the statements in the Constitution or programme of the party or public statements made on behalf of the party served to undermine the integrity and unity of the Republic by drawing a distinction between the Kurdish people and the Turkish people and by providing support for a right of self-determination of the Kurds. It is true that other grounds were also invoked by the Constitutional Court - in the case of the Communist Party, the use of the name "Communist"; and in the case of ÖZDEP, the party's proposal that religious affairs should be under the control of the religious institutions themselves. But it was what the Constitutional Court perceived to be the aim of undermining the unity and territorial integrity of the State in violation of Articles 2 and 3 of the Constitution and sections 78 and 81 of the Law on Political Parties which was at the heart of its decision to dissolve the party. The case of Refah is quite different. The sole ground for dissolution of the party was that, in terms of section 103 of the Law on Political Parties, it had become a "centre" for activities contrary to the principle of secularism which was guaranteed by Article 2 of the Constitution and in breach of section 78 of that Law.

The second point of distinction is a related one. In the case of the Communist and ÖZDEP Parties the offending statements of the party on which reliance was placed by the Constitutional Court were contained exclusively in the party's statute and programme. No reliance was placed on any individual statement made by the founders or leaders of the party, whether before or after the party had been formed. The dissolution of the Socialist Party was in this respect somewhat different. The first and unsuccessful attempt to dissolve the party was based exclusively on its political objectives as stated in the party's programme. However the second and successful application to dissolve the party was based both on extracts from the party's election publications and on oral statements made by its Chairman, Mr Perinçek, at public meetings and on television.

In the case of Refah, the dissolution of the party was based exclusively on the public statements and/or actions of the leaders and members or former members of the party. No reliance was placed either by the Principal State Counsel in bringing the proceedings or by the Constitutional Court in dissolving the party on the statute or programme of the party itself or on any election manifesto or other public statement issued by the party. In particular neither the State Counsel nor the Court was able to point to any provision of the statute or detailed programme of the party which advocated the creation of a theocratic State or which served to undermine the secular character of the State as embodied in the Constitution: on the contrary, the programme of the party expressly recognised the fundamental nature of the principle of secularism.

Despite these differences, there are we consider principles which can be drawn from the three judgments which are of direct application in the present case and which are not in our view fully brought out in the majority judgment. These principles can be summarised as follows:

(i) Notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy. There can be no democracy without pluralism. It is for that reason that freedom of expression as enshrined in Article 10 is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. The fact that their activities form part of a collective exercise of freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention (Communist Party case, § § 42-43; Socialist Party case, § 41; ÖZDEP case, § 37).

(ii) The State, as the ultimate guarantor of the principle of pluralism, has the obligation in the political sphere to hold, in accordance with Article 3 of Protocol No. 1, free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. Such expression is inconceivable without the participation of a plurality of political parties representing the different shades of opinions to be found within a country's population. By relaying this range of opinion, not only within the political institutions but also at all levels, political parties make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society (Communist Party case, § 44).

(iii) The exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11, § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts. Such scrutiny has been held necessary in a case concerning a Member of Parliament who had been convicted of proffering insults; it is all the more necessary where an entire political party is dissolved and its leaders banned from carrying on any similar activity in the future. Radical measures such as these may only be applied in the most serious cases (Communist Party case, § 46; Socialist Party case, § 50; ÖZDEP case, § 45).

(iv) One of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned. The fact that a political programme is considered incompatible with the current principles and structures of a State does not make it incompatible with the rules of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself. (Communist Party case, § 57; Socialist Party case, § 45, 47; ÖZDEP case, § 44)

The central question confronting the Court is whether, applying these principles, the dissolution of Refah, and the ancillary orders made in respect of the individual applicants, can be justified as being "necessary in a democratic society" for one or more of the legitimate aims specified in Article 11 § 2 and, more particularly, whether such measures represented a response to a "pressing social need" and were proportionate to the legitimate aim served.

Before addressing this question, we would briefly consider whether the admitted and serious interferences with the applicants' rights under Article 11 were prescribed by law and pursued a legitimate aim.

As to the former requirement, the applicants initially contended that the dissolution of Refah did not comply with the requirements of sections 101 and 103 of the Law on Political Parties. In particular it was claimed that it had not been shown that the party had been a "centre of activities contrary to the provisions of section 78 of the Law" since it had not been established in accordance with section 103 (2) of the Law that any organ capable of binding the party had been responsible for such activities or that any member of the party had been convicted of violating the provisions of the Law. In their written observations the Government pointed out that section 103 (2) had been declared unconstitutional by the Constitutional Court during the course of the dissolution proceedings and that the dissolution of the party was accordingly consistent both with the Constitution and with the Law. We initially had certain doubts as to whether the requirement of forseeability was satisfied, since section 103 (2) was declared unconstitutional only one week before Refah was dissolved by the Constitutional Court and long after the acts and statements of members of the party which formed the basis of the order dissolving the party. However in their Observations in reply the applicants no longer contested that the dissolution was lawful under domestic law "since this possibility is

provided in the Constitution". In view of the concession now made, we agree with the majority of the Court in finding that the dissolution was "prescribed by law" for the purposes of Article 11 § 2 of the Convention.

As to the legitimacy of the aim of the dissolution, we note that in the earlier political party cases the Court found it established, notwithstanding the applicants' arguments to the contrary, that the dissolution aimed at the protection of the territorial integrity of Turkey and thereby pursued at least one of the legitimate aims in Article 11, namely the interests of national security. We consider that in the present case it may be said that the dissolution of Refah served the legitimate aim of preserving secularism which lies at the heart of democratic order in Turkey and thus equally pursued the legitimate aims of the interests of national security, as well as of the prevention of disorder and the protection of the rights and freedoms of others.

The applicants argue that the real reason why the party was dissolved was not related to the party's views on secularism but was rather connected with the economic policies of the party, whose philosophy to reduce the indebtedness of the State was contrary to the interests of major business concerns. We do not consider that there is sufficient evidence to establish that this was the case or to suggest that the reasons for dissolving the party were other than those stated by the Constitutional Court. Accordingly we would agree with the majority of the Court that the dissolution pursued one or more legitimate aims.

On the crucial question of the necessity of the measures taken by the Constitutional Court, we would begin by making a number of preliminary remarks.

In the first place, we can readily accept the Government's argument as to the vital importance of secularism in Turkish society. As the Government point out, the State went through a long and painful struggle to establish a democratic and secular society and remains the only State with a substantially Islamic population which adheres to the principles of a liberal democracy. The example provided by States governed by fundamentalist Islamic regimes underlines the risk to democracy posed by a departure from the secular ideal.

Secondly, not only was Refah democratically elected in 1995 as the party with the largest number of seats in the Assembly but, as we have noted above, it is common ground that the party was organised on democratic lines and that there was nothing in its statute or programme to demonstrate or even suggest any departure from the principle of secularism or any encouragement to the use of violent or undemocratic means to replace the existing constitutional structure of the Turkish society.

The Government rely, as they did in the Communist and Socialist Party cases, on Article 17 of the Convention and on the Commission's early decision of 1957 in the case concerning the dissolution of the German

Communist Party. The Court in paragraphs 54 and 60 of its judgment in the Communist Party case rejected the argument of the Government. It pointed out that the Turkish Communist Party, despite its name, was wholly different from the German Communist Party of the 1950s, whose express declarations, according to the Commission's findings, envisaged a period of dictatorship by the proletariat during which rights and freedoms under the Convention would be destroyed. By contrast, the Court found that the Turkish Communist Party satisfied the requirements of democracy, including political pluralism, universal suffrage and freedom to take part in politics. The Court added that there was nothing in the constitution and programme of the party to warrant the conclusion that it relied on the Convention to engage in activities or to perform acts aimed at the destruction of any of the rights and freedoms set forth in it, thus bringing into play Article 17.

In our view the same may be said in the case of Refah. There is nothing in its constitution or programme to indicate that Refah was other than democratic or that it was seeking to achieve its objectives by undemocratic means or that those objectives served to undermine or subvert the democratic and pluralistic political system in Turkey. Admittedly, as the Court pointed out in the Communist Party case (paragraph 58), and as the majority reiterate in the present judgment (paragraph 48), it cannot be ruled out that a party's political programme may conceal objectives and intentions different from the ones it proclaims.

The Court in the earlier case, went on to observe that, in order to verify whether this was the case, the content of the programme had to be compared with the party's actions and the positions it defended. The Government in the present case indeed argue that it is a feature of Islamic politics to conceal one's true intentions and to achieve one's aims by surreptitious means. It is also contended that Refah showed itself to be actively aggressive against the established order. Whether this has been established to be the case depends on an examination of the evidence relied on by the Constitutional Court to dissolve the party.

Thirdly, where as here the grounds relied on by the Constitutional Court relate not to the programme and activities of the political party itself but rather to actions or statements of individual leaders or members of the party, we consider that particularly convincing and compelling reasons must be shown to justify a decision to dissolve the entire party. This is all the more so where, as in the present case, the acts or statements complained of were not linked in terms of time or place but were isolated events occurring in very different contexts over a period covering some six years and in certain cases long before Refah came to power. Moreover, it is we consider of considerable importance to note that no prosecution was ever brought against the three leading members of the party in respect of any of the acts or statements complained of; nor does it appear that they were subject to

any other measures, disciplinary or otherwise. While certain other members of the party were prosecuted for statements made, it is notable that in all but one case the prosecution was launched after the proceedings to dissolve the party had commenced.

The Government argue that the fact that the leaders were not proceeded against is irrelevant. It is pointed out that section 163 of the Law on Political Parties which made it an offence to violate the provisions of the Law was repealed. More importantly, it is argued that the absence of prosecution is irrelevant since the dissolution of the party is to be seen as a genuine alternative to the prosecution of the individual leaders or members.

The Government's argument has to some extent found favour with the majority of the Court. In paragraph 78 of the judgment it is noted that not only had section 163 been repealed but that Mr Erbakan had made clear the party's opposition to the provisions of the section in a speech in October 1993. In the view of the majority of the Court, it is not open to the applicants in these circumstances to argue that the party leaders were not prosecuted for anti-secular activities under a provision which had been repealed, when it was those very persons who had supported and defended such repeal.

We are unable to accept these arguments for a number of reasons:

(i) Several of the acts and statements relied on by the Constitutional Court date back to a period before the repeal of section 163 and to a time when the provision remained in full force and effect.

(ii) We find the "estoppel" argument advanced by the majority to be unconvincing and do not consider that the authorities relied on in paragraph 78 of the judgment provide any support for the argument. In its judgments in the Pine Valley and the Kolompar case to which reference is made, the Court was concerned with the very different situation where arguments were being advanced to the European Court which were diametrically contrary to those which had been advanced in the national courts. In the present case, the important point is not whether the applicants publicly supported or opposed the provisions of section 163, but the fact that, despite the strong criticisms made by the Constitutional Court of the statements and actions of the individual applicants, and the decisive importance attached to them in its decision to dissolve the party, no measures were taken by the national authorities against those responsible at the time of the acts and statements complained of, whether under section 163 or otherwise.

(iii) In judging the proportionality of the measures taken to dissolve the entire party on the grounds that it was a centre of anti-secularism, we consider it to be significant that, with the repeal of section 163, the acts and statements which are relied on as evidence of this, are no longer themselves contrary to the law. In this regard we cannot accept that, in terms of Article 11, the use of the blunt instrument of dissolving a party is to be seen as a

genuine alternative to the taking of steps against the individual person responsible.

(iv) Finally, in concluding that the dissolution of Refah was a proportionate measure, the majority of the Court lay emphasis in paragraph 82 of the judgment on the fact that following its dissolution only five of its 158 members of the Parliamentary Assembly including the individual applicants, were stripped of their Parliamentary functions and of their role as leaders of their political party, the remaining members of the party continuing to exercise their Parliamentary mandate and to be able to follow their political careers in the normal way.

We are again not convinced by this argument. The difficulty with the argument is that it ignores the fact that it is Refah itself, with its own separate personality in terms of the Convention, which is the principal applicant and it is the party's rights of association which are primarily at issue. Whatever the effect of the party's dissolution on its members, the effect on the party itself could not be more serious, its identity being destroyed and its property confiscated.

We agree with the majority of the Court (Judgment, § 68) that an assessment of the necessity of the measures taken must depend on an examination of the grounds relied on for its decision by the Constitutional Court. In our view this involves a close scrutiny of the twelve individual acts and statements on which the majority of the Constitutional Court based its judgment.

In paragraph 73 of the judgment the majority of the Court accept that, considered in isolation, four of the grounds relied on - those concerning the wearing of the Islamic scarf, the rearrangement of the working hours in the public service to accommodate prayers, the visit of the Sevket Kazan to a colleague and fellow member of the party, who was in prison awaiting trial for incitement to religious hatred, and the reception offered by Necmettin Erbakan for the leaders of different Islamic movements - could not be considered an imminent threat to the secular system in Turkey. However, the majority go on to accept as convincing the Government's argument that these incidents are to be seen as consistent with the avowed aim of Refah to institute a political regime founded on the Sharia. While we agree that, in addition to examining the individual grounds relied on by the Constitutional Court, the judgment of that Court must be viewed as a whole, we would note that each of the grounds (including the four referred to by the majority) was regarded by the Constitutional Court as an important element in its decision to dissolve the party and must accordingly be examined on its individual merits.

The first ground relied on by the Constitutional Court indeed concerned the encouragement that Mr. Erbakan gave to the wearing of the Islamic scarf in public institutions and schools, which was said to have put pressure on those who refused to follow the custom and to have given rise to

discrimination. Such wearing of scarves was declared unconstitutional in 1989 but it does not appear that any steps were taken against Mr. Erbakan in respect of any encouragement he might have given. Even if there were evidence that his actions had led to the divisions indicated, it could not in our view possibly justify the dissolution of the whole party. In this regard, the Constitutional Court and the Government draw support from two decisions of the Commission (No. 16278/90, Karaduman v. Turkey; No. 18783/91, Bulut v. Turkey) in which it was held that the application of the rules of secular universities prohibiting the wearing of the Islamic scarf did not violate the freedom of religion of the applicants in those cases. The cases are not in our view directly in point and certainly cannot be used to support the very different proposition that mere encouragement to the wearing of scarves can justify the dissolution of a political party.

The same may, in our view, be said of the charge that, as Prime Minister, Mr. Erbakan entertained at a dinner in his official residence heads of different religious movements, who were known for their anti-secular statements and activities and who wore their symbolic religious robes, thereby displaying his clear public toleration and support for such persons and groups. We note that there is a dispute as to precisely who it was who attended the reception, the applicants asserting that it was officials of the Religious Affairs Organisation and administrators and academics from the school of theology. Whatever the true position, we share the view of the minority of the Constitutional Court that such an official invitation, even if the guests were so robed, could not under any circumstances justify the dissolution of the party.

The charge that Mr. Erbakan had signed a decree in January 1997 rearranging the working hours of public employees to facilitate the observance of Ramadan, thereby revealing anti-secular tendencies, seems to us equally to afford no proper basis for the dissolution of the party. In this regard we note the undisputed submission of the applicants that the decision in question had been agreed to by all Government Ministers, including those who did not belong to Refah, and that similar decisions had been taken since 1981 without it being suggested that they were in any sense objectionable.

Reliance was further placed by the Constitutional Court on four statements made by Mr. Erbakan:

(i) a speech to the National Assembly made in March 1993, in which he referred to the right of those adhering to different religions to choose and live under their own juridical systems;

(ii) a speech to the general assembly of Refah in October 1993, in which he stated that the party would guarantee the right of everyone to live under their preferred juridical system;

(iii) a speech to the Parliamentary group of Refah in April 1994, in which he referred to the party establishing "a just order" and questioned whether the transition to such an order would be peaceful or violent;

(iv) and an interview and speech in May 1996, on the anniversary of the Kanal 7 television channel, in which Mr. Erbakan emphasised the importance of television as an instrument of propaganda in the context of the Holy War (Jihad) to establish a just social order.

As to the first two speeches, the Constitutional Court found that the "multi-juridical system" (in the sense of a plurality of co-existing legal systems) advocated by Mr. Erbakan would lead to discrimination on grounds of religion and, as such, was contrary to the requirements of the principles of secularity.

The majority of the Court (Judgment § 69) have found that a multi-juridical system such as that proposed would introduce a discrimination between individuals on grounds of their religion, categorising them according to their membership of a particular religious movement, and that such a model of society would not be compatible with the Convention system, imposing as it would on individuals the obligation to obey not the rules laid down by the State but those imposed by the religion concerned.

Unlike the majority, we do not find it necessary to examine the precise nature or effect of the multi-juridical society to which reference was made by Mr. Erbakan, since in our view the statements afford an inadequate basis on which to conclude that these statements posed at the time of the dissolution of Refah a genuine threat to the secular order. In this regard, we note that the statements relied on by the Constitutional Court were extracts from longer addresses made in 1993, well over four years before the decision to dissolve the party and some three years before the party came to power. We can find no evidence in the material before the Court that, once in Government, the party took any steps to introduce a multi-juridical society of the kind indicated in the judgment of the Constitutional Court.

Substantially the same applies in the case of the other two speeches which were also made before Refah came to power. As to the former, while we can accept the view of the majority of the Court that, although ambiguous, terms such as "just order" are to be understood in their context as meaning a State order founded on religious norms, we can again find no evidence to indicate that Refah, once in power, ever sought to implement such a system. As to the latter speech (which we note was only added as a ground for dissolution after the dissolution proceedings had begun), while we can again accept the majority's view as to the ambiguity of the terminology used in the speech, we are unable to find any evidence to suggest that the party used or encouraged the use of violence or undemocratic means to destroy the secular system or establish the supremacy of an Islamic regime. In this connection it is, we consider, also of some relevance to note that an investigation was instituted following the

Kanal 7 speech but that a decision was taken not to prosecute, the prosecutor concluding that the statement did not include any expressions which could create hatred between religions or sects or which otherwise amounted to an offence.

Sevket Kazan was at the material time the Vice-Chairman of Refah and the Minister of Justice. The only complaint against him was that he paid a brief private visit to prison to see Bekir Yildiz, the mayor of Sincan and Vice-Chairman of Refah, who was in detention on remand charged with anti-secular activities. The Constitutional Court observed that, as Minister of Justice, it was Mr. Kazan's duty to conform to the spirit as well as to the letter of law in his political and administrative activities and that his prison visit conveyed the public message that he and the party approved of the acts with which Mr. Yildiz was charged and that the action of Mr. Kazan was thus contrary to the principle of secularity.

Whether or not such a visit was in the circumstances wise, we are unable to accept that it could be interpreted as support by the party for anti-secular activity; still less can we accept that it amounted to a justifiable ground for dissolving the party, not least when the National Assembly itself declined even to initiate a Parliamentary investigation into the incident.

As to Ahmet Tekdal, complaint was made that, as Vice-Chairman of the party he had made a speech in 1993 - over four years before the dissolution of the party - during a pilgrimage to Saudi Arabia which was televised in Turkey in November 1996 and in which he referred to the need to use all efforts to install a "just order" in Turkey. The Constitutional Court concluded that Mr. Tekdal had thereby foreseen the installation of a regime based on the Sharia and that the speech was thus clearly contrary to secular principles.

As in the case of Mr. Erbakan, we can find no basis for concluding that a speech made long before Refah came to power could justify dissolution of the party itself, the more so since there appears to have been no legal investigation against Mr. Tekdal himself at the relevant time.

The other grounds of dissolution relate to speeches made by four members or former members of Refah, who were at no stage leaders or officials of the party. The first was that of Şevki Yilmaz, who in a public speech in April 1994 called on the population to unleash a Holy War and defended the establishment of the Sharia - statements which, as the Constitutional Court found, were incontestably contrary to the requirements of the principle of secularity. As noted in the judgment of the Constitutional Court, criminal proceedings were instituted against Mr. Yilmaz in relation to one of his speeches. As was further noted, Mr. Yilmaz had been expelled from the party within a month of the commencement of the proceedings to dissolve the party.

The charge against the party, which was upheld by the Constitutional Court was that, notwithstanding that the anti-secular views of Mr. Yilmaz

were well known, the party had proposed him as a candidate in the municipal elections and, after his election as mayor of Rize, had assured his election as a Member of the National Assembly, thereby clearly showing that it had adopted his anti-secular activities and speeches. In addition, reliance was placed on the fact that the party had not conducted its own investigation against Mr. Yilmaz before the dissolution proceedings began and had not expressed its disapproval of his speeches, thereby showing that it approved of his views. As to the fact that he had been expelled from the party, this was dismissed by the Constitutional Court as a mere attempt by the party to escape from the dissolution proceedings.

We are not convinced by the argument that, in failing to take measures against Mr. Yilmaz or to disavow the terms of his speech, Refah is to be held to have adopted his views as their own. Moreover, unlike the Constitutional Court and the majority of our Court (Judgment, § 77), we attach some significance to the fact that he was excluded from the party, albeit after the proceedings began. In this regard, we observe that section 101(d) of the Law on Political Parties (which was in effect until section 103(2) of that Law was declared unconstitutional one week before the order for dissolution of the party) expressly contemplated that if an offending member of a party was expelled within thirty days of the commencement of the dissolution proceedings founded on his offence, the proceedings would automatically terminate. More importantly, we cannot in any event find that a speech made by a member of a party in 1994, whether or not disavowed by the party itself, could justify the dissolution of the party some four years later.

The same applies to the two speeches - in 1992 and March 1993 - of Hasan Huseyin Ceylan, which were found by the Constitutional Court to be both discriminatory and to encourage violent action by supporters of the Sharia against those opposing their views. Mr. Ceylan was prosecuted for the statements after the proceedings for the dissolution of the party had commenced. He was also expelled from the party. Nevertheless, the party was held to have shown that they approved of his statements by supporting his candidature for election and by distributing a video recording of the latter speech within the local party organisation.

Although the speeches - and particularly that of March 1993 - were undeniably cast in intemperate terms, we again cannot find that they could justify the dissolution of the party as a whole, several years later.

The speeches of Şükrü Karatepe and Ibrahim Çelik, although more recent in time, fall in our view into the same category. The former, as mayor of Kayseri, in a speech in November 1996 called on the Muslim population to harbour their hatred until there was a change in the regime. Mr. Karatepe was prosecuted and convicted for inciting religious hatred after the dissolution proceedings had begun. Ibrahim Çelik, a Refah Party member of the National Assembly, was found to have stated in the corridors of the

Assembly in May 1997 that, if religious schools were closed, blood would flow and that he wished to install the Sharia. As in the case of the other three members of the party, an investigation was opened against him on a number of grounds. Like Mr. Yilmaz and Mr. Ceylan he was expelled from the party. Nevertheless, the Constitutional Court found that the fact that he had been put forward as a candidate by the party in the knowledge of his activities and views showed that Refah approved of them.

As in the case of the other two members of Refah, who were not leaders of the party and who did not act as its official spokesmen, we consider that any infringement of the law fell to be dealt with, as it indeed was, by an investigation against the individuals responsible. What we cannot accept is that the making of such statements, whether or not ultimately resulting in prosecution, could also justify the draconian measure of dissolving the entire party to which they belonged.

The question which the Constitutional Court was required to determine was whether, having regard to the acts and statements of the leaders of Refah and of its members, the party had become a centre of anti-secular activity for the purposes of the Law on Political Parties. Having decided that it had, the dissolution of the party was mandated by the Law and Constitution.

The question before our Court is a different one, namely whether the extreme measure of dissolution (a measure which was alternatively described by the Court in its earlier judgments as “radical” and “drastic”) could be considered as responding to a pressing social need and as a measure which was proportionate to the legitimate aims served.

In answering this question in the affirmative, the majority of the Court have found that the national authorities were entitled to act to prevent the realisation of the political aims which were incompatible with Convention norms before those aims could be put into effect in a manner which compromised civil peace and the democratic system within the country (Judgment, § 80).

We regret that we are unpersuaded by this reasoning. What is in our view lacking is any compelling or convincing evidence to suggest that the party, whether before or after entering Government, took any steps to realise political aims which were incompatible with Convention norms, to destroy or undermine the secular society, to engage in or to encourage acts of violence or religious hatred, or otherwise to pose a threat to the legal and democratic order in Turkey.

In the absence of such evidence, we find that the dissolution of Refah and the confiscation of its property, as well as the ancillary orders made against the individual applicants were in violation of Article 11 of the Convention.