



Resolution 1308 (2002)¹

Restrictions on political parties in the Council of Europe member states

Parliamentary Assembly

1. The question of “the banning of democratically elected political parties” in Council of Europe member states was raised in the Parliamentary Assembly two years before the European Court of Human Rights handed down its judgment of 31 July 2001 in the case of *Refah Partisi (Welfare Party) and Others against Turkey*. This judgment, which held that the banning of a political party was not incompatible with the European Convention on Human Rights, is not final: the case has been referred to the Grand Chamber of the Court.
2. The Assembly considers that the issue of restrictions on political parties is by nature a very complex one. However, the tragic events which took place in New York on 11 September 2001 should encourage us to reflect still further on the threats to democracy and freedoms posed by extremism and fanaticism.
3. The question of restrictions on political parties reflects the dilemma facing all democracies: on the one hand, the ideology of certain extremist parties runs counter to democratic principles and human rights, and on the other hand, every democratic regime must provide maximum guarantees of freedom of expression and freedom of assembly and association. Democracies must therefore strike a balance by assessing the level of threat to the democratic order in the country represented by such parties and by providing safeguards.
4. The Assembly points out that, in the Council of Europe member states, restrictive measures applied to political parties are provided for in their constitutions or national legislations.
5. In this respect, the Assembly notes that the historical development of each individual country and differences in the level of tolerance result in a diverse range of sanctions, varying from one country to another, for identical situations. For example, coercive measures range from mere material restrictions to dissolution, which remains, nevertheless, an exceptional measure.
6. The Assembly takes note of the proposals put forward by the European Commission for Democracy through Law (Venice Commission) in its Guidelines on the prohibition and dissolution of political parties and analogous methods (published in January 2000) in order to obviate the need to adopt the extreme solution of banning political parties. The measures it recommends include fines, administrative measures, withdrawal of state subsidies, boycotts by other political factions, and bringing members of the political party involved to justice.
7. The Assembly notes that in many states no legal restrictions on the activities of political parties have been applied in recent years, and that in cases where sanctions had been envisaged they were ultimately not put into effect. Nevertheless, the Assembly points out that some countries have on occasion felt it necessary to take steps to dissolve political parties.
8. In this regard, it also points out that a common feature of all democracies is that the prohibition of political parties is the responsibility of the judicial authorities. In most countries, it comes under the exclusive competence of the Constitutional Court, or much less frequently the Supreme Court or ordinary courts.

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 November 2002 (see [Doc. 9526](#), report of the Political Affairs Committee, rapporteur: Mr Dreyfus-Schmidt).



9. The Assembly stresses that the European Convention on Human Rights constitutes a safeguard against the abusive dissolution of a political party. The European Court of Human Rights has stated that “political parties are a form of association essential to the proper functioning of democracy”.² Having regard to this fundamental role, the Court emphasises that “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.”³ The Court has been required to rule on cases of dissolution on a number of occasions since 1952.

10. In this context, the Assembly believes that in exceptional cases, it may be legitimate for a party to be banned if its existence threatens the democratic order of the country.

11. In conclusion and in the light of the foregoing, the Assembly calls on the governments of member states to comply with the following principles:

political pluralism is one of the fundamental principles of every democratic regime;

restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country;

as far as possible, less radical measures than dissolution should be used;

a party cannot be held responsible for the action taken by its members if such action is contrary to its statute or activities;

a political party should be banned or dissolved only as a last resort, in conformity with the constitutional order of the country, and in accordance with the procedures which provide all the necessary guarantees to a fair trial;

the legal system in each member state should include specific provisions to ensure that measures restricting parties cannot be used in an arbitrary manner by the political authorities.

2. See ECHR, 30 January 1998, United Communist Party of Turkey and Others against Turkey judgment.
3. See ECHR, 28 May 1998, Socialist Party and Others against Turkey judgment.