



Refah Partisi v. Türkiye: Democracy Derailed or Secularism Shielded?

Question(s) at stake:

Whether the dissolution of Refah Partisi for its alleged secret efforts to establish sharia law within a plurality of legal systems was justified and compatible with Article 11 of the European Convention on Human Rights (ECHR).

Outcome of the ruling:

The Grand Chamber of the European Court of Human Rights (ECtHR) considered the actions and speeches of some of Refah's members and its president, which were found to be indicative of Refah's alleged hidden long-term policy to establish sharia law within a plurality of legal systems, to be attributable to the party as a whole. The Grand Chamber found that the dissolution of Refah met a pressing social need. The Court considered the severity of the interference, along with the temporary ban on certain political activities for some members, to be proportionate to the aims pursued. Consequently, the Grand Chamber found no violation of Article 11 of the Convention.

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- [State recognition of Groups and Their Practices](#)

Keywords:

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- [Political opinion](#)
- [Laïcité](#)

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- [Laiklik](#)

- [Secularism](#)
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European Court of Human Rights / Grand Chamber

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- European Court of Human Rights, Chamber Judgment, 31 July 2001
- Turkish Constitutional Court, 16 January 1998
- Turkish Constitutional Court, 9 January 1998

Subsequent stages:

None

Branches / Areas of law:

Constitutional Law, Human Rights Law

Facts:

Refah Partisi was founded in 1983. In the late 1980s and early 1990s, Refah had major successes in local elections. In the 1995 general elections it received 22% of the vote and 38% in the 1996 local elections. In 1996 Refah became part of a coalition government.

In 1997 the Principal State Counsel at the Turkish Court of Cassation (Yargıtay Cumhuriyet Başsavcısı) applied to the Turkish Constitutional Court to have Refah dissolved on the grounds that it was a “centre of anti-secular” activities. Evidence provided by the Principal State Counsel can be summarized as follows:

- Refah advocated for allowing Islamic headscarves to be worn in state schools and buildings by students and personnel.
- President of Refah Necmettin Erbakan promoted the abolition of secularism.
- Several members of the party made references to establishing a theocratic regime in place of a secular (*laik*) one and made references to violence to achieve this goal.
- Refah took no disciplinary action against these members.

Refah denied the allegations and argued that the closure of the party did not serve a pressing social need and was unnecessary. The party did not pose a “clear and present danger” that would justify a ban.

The applicants argued that they were not against secularism and that their conception of secularism in fact implied respect for all beliefs. They stated that speeches of a few members of the party were not attributable to the party itself, and three of the members had already been expelled from the party.

Principal State Counsel stated that Refah's plan to create a plurality of legal systems for different religious groups aimed to destroy democracy in Türkiye by establishing a theocracy and undermined the unitary character of the state.

On 9 January 1998, the Constitutional Court of Türkiye, acting on its own motion, examined the constitutionality of the second paragraph of Article 103 of the Political Parties Law No. 2820, as amended by Law No. 3270, while overseeing the case concerning the closure of the Refah Party. The Court assessed whether the second paragraph of Article 103 conflicted with the sixth paragraph of Article 69 of the Turkish Constitution. Article 69(6), in conjunction with Article 101(d) of Law No. 2820, stated that a political party could only be deemed a "centre" of activities contrary to the fundamental principles of the Republic if its members were convicted of crimes. The Constitutional Court argued that this condition failed to address all potential scenarios in which the Republic's foundational principles could be undermined.

In its ruling, the Constitutional Court declared the second paragraph of Article 103 of the Political Parties Law unconstitutional and invalid. This decision effectively relaxed the requirements for dissolving a political party and broadened the grounds on which a party could be shut down for actions deemed incompatible with the Republic's core principles.

The Constitutional Court noted that after Article 163 of the Criminal Code was repealed in 1991, activities and propaganda against the principle of secularism were not considered a crime anymore. This move ensured that activities by political parties violating the Republic's principles could still be addressed even if they weren't classified as crimes.

On 16 January 1998 the Constitutional Court dissolved Refah due to it becoming a "centre of activities contrary to the principle of secularism".

The Constitutional Court asserted that while political parties play a central role in democratic politics, their activities must respect the principle of secularism. It referenced the Constitution and various domestic laws that mandate political parties to uphold secularism in political and social life. It stated that secularism is particularly important in Türkiye due to its historical context and the specific nature of Islam, noting that sharia law is incompatible with a democratic regime.

The Constitutional Court highlighted that the Refah Party chairman, Necmettin Erbakan, had promoted lifting the ban on the wearing of Islamic headscarves in public and educational settings, which was seen by the Court as pressuring those who did not follow this practice and causing religious discrimination.

Erbakan had also mentioned a plurality of legal systems in his speeches, inspired by the historical “Medina Agreement”, which allowed different religious communities to follow their own legal systems during the time of Prophet Muhammed. The Constitutional Court criticized this approach, arguing it would fragment society into religious groups with separate laws and thereby undermine national and judicial unity.

Some of Mr. Erbakan’s and several MPs’ speeches were compiled to illustrate how Refah aimed at – potentially violently – abolishing secularism and democracy to institute a sharia-based theocratic regime. These speeches can be found between paragraphs 31 to 39 of the ECtHR ruling.

According to the Constitutional Court, Refah was using democratic freedoms to replace the existing democratic order with a sharia-based regime. The Court characterized democracy as the “antithesis of Sharia” and argued that the principle of secularism had enabled the Turkish public to move from “Ummah (Muslim Community) to the nation”. The Court pointed out that “secularism accelerated civilization by preventing religion from replacing scientific thought in the State’s activities”. Finally, the Court linked secularism inseparably to democracy and stated that it regarded secularism as “the philosophical essence of life in Turkey”.

It was found that public statements by some Refah Party members, including Mr Necmettin Erbakan, made the party accountable for unconstitutional activities.

Judges Haşim Kılıç and Sacit Adalı argued in their dissenting opinions that dissolving Refah was incompatible with the ECHR and the ECtHR case law on political party dissolution. They believed that political parties that do not support violence should be allowed in political life and that a democratic and pluralist state should accommodate debate, even on disturbing or shocking ideas.

The applicants applied to the ECtHR claiming that dissolving the Refah Partisi and temporarily banning its leader and some members from holding similar positions in any other political party violated their right to freedom of association, as protected by Article 11 of the Convention.

After the Chamber found no violation, the case was referred to the Grand Chamber.

The applicants argued that the interference was not prescribed by law due to the fact that some provisions of the law regulating political parties, which set strict criteria for their dissolution, were declared unconstitutional a week before the Constitutional Court dissolved Refah. This made the criteria for dissolving parties unforeseeable for Refah and its members.

The applicants argued that the speeches mentioned by the Turkish authorities, which were made years earlier, were insufficient to prove that the party posed a threat to secularism and democracy in Türkiye at the time of its dissolution proceedings. They noted that Refah had been in power for 13 years with significant responsibilities in local and central government, suggesting that the Court should consider all factors, including the party's activities throughout its existence, to determine the necessity of its dissolution.

They highlighted that during Refah's year in the ruling coalition (June 1996 to July 1997), the party did not attempt to introduce legislation for an Islamic law regime. The applicants contended that statements and actions by expelled members should not be attributed to Refah, and the chairman's speeches should be interpreted in context.

Regarding the issue of plurality of legal systems, they clarified that Mr Necmettin Erbakan's isolated speeches from 1993 suggested a civil-law system based on contractual freedom that did not affect public law, and that to oppose such a policy was to discriminate against Muslims. They disputed the Chamber's assertion that supporting sharia was incompatible with democracy, arguing it could lead to discrimination against Muslims.

Lastly, the applicants argued that the dissolution was disproportionate, emphasizing the severity of dissolving a political party based on certain members' speeches, the significant political restrictions imposed on key figures, and the financial losses suffered by Refah.

The Government argued that Refah had never exercised power alone and thus lacked the opportunity to establish a theocratic state, but if it had, it would have ended democracy in Türkiye. It contended that the criticized speeches were attributable to Refah, pointing out that party members responsible for such acts were not excluded as per the party's constitution.

The Government stated that Refah's plan to introduce a plurality of legal systems was incompatible with non-discrimination, a fundamental democratic principle. Although the official programme of Refah was not problematic, the leaders' activities and speeches indicated a desire to introduce sharia if they were to come to power alone, as evidenced by clear references to sharia in the 1995 campaign.

Ruling:

The Grand Chamber (or the GC) started its ruling by emphasizing the importance of political parties for political pluralism, which is a condition for a democratic society. It stated that the freedom of expression under Article 10 of the ECHR applied to ideas that can offend or disturb some portions of a society and that this also applied for the policies of political parties. It also added that freedom of thought, conscience, and religion, protected by Article 9 of the Convention, is crucial for a plural democratic society. Nonetheless, the Grand Chamber asserted that the freedoms guaranteed by Articles 11, 9, and 10 do not prevent a state

from interfering if a political party's actions jeopardize democracy. However, it noted that state intervention under Article 11(2) needs convincing justifications and rigorous supervision due to the critical role political parties play in a democratic state. Drastic measures like dissolution should only occur if it is absolutely necessary.

The Grand Chamber went on to identify whether a present threat was posed by Refah's actions to the democracy of Türkiye. It observed that since 1983, Refah had participated in various general and local elections, achieving significant electoral success in both local and general elections in the 1990s. Despite the inherent uncertainties of opinion polls, the Grand Chamber found that figures around the time of Refah's closure indicated a potential substantial increase in Refah's popularity. This meant that in the near future Refah's political influence, and its likelihood of achieving power independent of a coalition, would increase. The GC argued that if this were to happen, Refah could have proposed a programme contrary to democratic principles, and its control over political power would have enabled it to implement the societal model outlined in Erbakan's speech.

Against the applicants' assertion that Refah was penalized for speeches made by its members several years prior to its dissolution and that there was no imminent threat, the Grand Chamber found that the Turkish courts were justified in considering the progression over time of the real risk posed by Refah to democratic principles. It argued that the actual agenda of a political party can become evident through the cumulative acts and speeches of its members over an extended period. The Grand Chamber considered that the applicants posed an imminent danger to the rights and freedoms of others guaranteed by the Convention. It found that Turkish authorities acted within the margin of appreciation afforded to them under the Convention by intervening at the time they did in this case.

The GC acknowledged that Refah had never actually proposed altering Türkiye's Constitution in a manner contradicting democratic principles, neither in its programme nor in its coalition agreements. However, it reiterated that Refah was

dissolved based on statements and positions taken by its chairman and some members. It attributed these statements and speeches of Necmettin Erbakan, both as Refah's chairman and as Prime Minister, directly to the party. Furthermore, it held that the collective actions and statements of other Refah members in significant roles also represented the party's intentions and vision. The Grand Chamber pointed out that Refah did not take any disciplinary measures against these members until dissolution proceedings began. Thus, subsequent actions were seen as attempts to avoid dissolution rather than genuine internal governance.

The GC found the concept of a plurality of legal systems that was mentioned in Erbakan's speech to be incompatible with the Convention system. It stated that this system would inherently discriminate between individuals based on their religious beliefs, violating the principle of non-discrimination enshrined in Article 14 of the Convention.

The GC stated that the content of some of the speeches made by the members of Refah was enough for national authorities to argue that the party, at least secretly, aimed to establish a form of sharia law. The Grand Chamber argued that sharia law's rootedness in religious dogmas and rules lacked the flexibility to accommodate principles like political pluralism in a democracy. The Grand Chamber also highlighted the importance of secularism for Türkiye's democracy by linking it to the country's transition from an Islamic theocratic regime under Ottoman law to a secular republican regime.

The Grand Chamber contended that while there was no precedent of violence by Refah and its members, the speeches gave credible indications that there was a potential risk of the party resorting to force and violence.

Consequently, the Grand Chamber found no violation of Article 11 of the Convention.

Main quotations on cultural or religious diversity:

"[I]n democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom [of

religion] in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected [...]. The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs [...] and that it requires the State to ensure mutual tolerance between opposing groups". (para. 91)

"The Court sees no reason to depart from the Chamber's conclusion that a plurality of legal systems, as proposed by Refah, cannot be considered to be compatible with the Convention system. In its judgment, the Chamber gave the following reasoning:

'70. ... 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 [...].

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.” (para. 119)

“The Court concurs in the Chamber’s view that sharia is incompatible with the fundamental principles of democracy, as set forth in the Convention:

‘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 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.’” (para. 123)

“The Court must not lose sight of the fact that in the past political movements based on religious fundamentalism have been able to seize political power in certain States and have had the opportunity to set up the model of society which they had in mind. It considers that, in accordance with the Convention’s provisions, each Contracting State may oppose such political movements in the light of its historical experience”. (para. 124)

“The Court further observes that there was already an Islamic theocratic regime under Ottoman law. When the former theocratic regime was dismantled and the republican regime was being set up, Turkey opted for a form of secularism which confined Islam and other religions to the sphere of private religious practice. Mindful of the importance for survival of the democratic regime of ensuring respect for the principle of secularism in Turkey, the Court considers that the Constitutional Court was justified in holding that Refah’s policy of establishing sharia was incompatible with democracy”. (para. 125)

“The Court will next examine the applicants’ argument that the Chamber contradicted itself in holding that Refah supported introducing both a plurality of legal systems and sharia simultaneously. It takes note of the Constitutional Court’s considerations concerning the part played by a plurality of legal systems in the application of sharia in the history of Islamic law. These showed that sharia is a system of law applicable to relations between Muslims themselves and between Muslims and the adherents of other faiths. In order to enable the communities owing allegiance to other religions to live in a society dominated by sharia, a plurality of legal systems had also been introduced by the Islamic theocratic regime during the Ottoman Empire, before the Republic was founded”. (para. 126)

“The Court is not required to express an opinion in the abstract on the advantages and disadvantages of a plurality of legal systems. It notes, for the purposes of the present case, that – as the Constitutional Court observed – Refah’s policy was to apply some of sharia’s private-law rules to a large part of the population in Turkey (namely Muslims), within the framework of a plurality of legal systems. Such a policy goes beyond the freedom of individuals to observe the precepts of their religion, for example by organising religious wedding ceremonies before or after a civil marriage (a common practice in Turkey) and according religious marriage the effect of a civil marriage [...]. This Refah policy falls outside the private sphere to which Turkish law confines religion and suffers from the same contradictions with the Convention system as the introduction of sharia (see paragraph 125 above)”. (para. 127)

“Pursuing that line of reasoning, the Court rejects the applicants’ argument that prohibiting a plurality of private-law systems in the name of the special role of secularism in Turkey amounted to establishing discrimination against Muslims who wished to live their private lives in accordance with the precepts of their religion. It reiterates that freedom of religion, including the freedom to manifest one’s religion by worship and observance, is primarily a matter of individual conscience, and stresses that the sphere of individual conscience is quite different from the field of private law, which concerns the organisation and functioning of society as a whole. It has not been disputed before the Court that in Turkey everyone can observe in his private life the requirements of his religion. On the other hand, Turkey, like any other Contracting Party, may legitimately prevent the application within its jurisdiction of private-law rules of religious inspiration prejudicial to public order and the values of democracy for Convention purposes (such as rules permitting discrimination based on the gender of the parties concerned, as in polygamy and privileges for the male sex in matters of divorce and succession). The freedom to enter into contracts cannot encroach upon the State’s role as the neutral and impartial organiser of the exercise of religions, faiths and beliefs”. (para. 128)

“The Court considers that, whatever meaning is ascribed to the term ‘jihad’ used in most of the speeches mentioned above (whose primary meaning is holy war and the struggle to be waged until the total domination of Islam in society is achieved), there was ambiguity in the terminology used to refer to the method to be employed to gain political power. In all of these speeches the possibility was mentioned of resorting ‘legitimately’ to force in order to overcome various obstacles Refah expected to meet in the political route by which it intended to gain and retain power”. (para. 130)

Main legal texts quoted in the decision:

Domestic law

- Articles 2, 4, 6, 10(1), 14(1), 24(4), 68(4), 69(6), 69(8), and 84 of the Constitution of the Republic of Türkiye

- Sections 78, 90(1), 101(b), 103(1), and 107(1) of the Law No. 2820 on the regulation of political parties
- Article 163 of the Criminal Code

International law

- Articles 1, 9, 10, 11, 14, 17 of the European Convention on Human Rights

Cases cited in the decision:

- *Dahlab v. Switzerland*, App. no. 42393/98, decision of 15 February 2001
ECLI:CE:ECHR:2001:0215DEC004239398
- *Karaduman v. Turkey*, App. no. 16278/90, decision of 3 May 1993
ECLI:CE:ECHR:1993:0503DEC001627890
- *Serif v Greece*, App. no. 38178/97, judgment of 14 December 1999
ECLI:CE:ECHR:1999:1214JUD003817897
- *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, App. nos. 29225/95 and 29221/95, judgment of 2 October 2001
ECLI:CE:ECHR:2001:1002JUD002922195
- *United Communist Party of Turkey and Others v. Turkey*, App. no. 19392/92, judgment of 30 January 1998
ECLI:CE:ECHR:1998:0130JUD001939292
- *X. v. the United Kingdom*, App. no. 8160/78, judgment of 12 March 1981
ECLI:CE:ECHR:1981:0312DEC000816078
- *X. v. the United Kingdom*, App. no. 7992/77, decision of 12 July 1978
ECLI:CE:ECHR:1978:0712DEC000799277
- *Yanasik v. Turkey*, App. no. 14524/89, decision of 6 January 1993
ECLI:CE:ECHR:1993:0106DEC001452489
- *Yazar and Others v. Turkey*, App. nos. 22723/93, 22724/93, and 22725/93, judgment of 9 April 2002
ECLI:CE:ECHR:2002:0409JUD002272393
- *Zana v. Turkey*, App. no. 18954/91, judgment of 25 November 1997
ECLI:CE:ECHR:1997:1125JUD001895491

Commentary

Refah Partisi v. Türkiye: Democracy Derailed or Secularism Shielded?

In the year 1991, Articles 141, 142, and 163 of the Turkish Penal Code were repealed. These articles had criminalized “communism”, “separatism”, and “anti-secular” propaganda and, along with a stringent law regulating political parties, acted as a “sword of Damocles” over political parties. Any political party that had agendas specific to minority ethnicities, religions, languages, or races within Türkiye, or ones that were critical of the “*laik*” (secularist) practices of the state, was deemed unconstitutional by the Turkish Constitutional Court (TCC). This led to many political parties being closed down by the TCC before 1991. While repealing these articles was a major step toward democratization, the law on the regulation of political parties and the continued zealous approach of the TCC meant that political party closures remained a frequent occurrence.

The Venice Commission criticized Türkiye for its overly strict criteria regarding political parties, deeming this approach incompatible with the values of the ECHR (Özbudun and Türkmen 2013). The Commission highlighted the role of the Turkish judicial system as a key facilitator of this restrictive approach (Venice Commission 2009). Such criticism is warranted, given the Turkish judiciary’s historical role in protecting the interests of the “political and military elites” of the country rather than upholding the fundamental freedoms of citizens (Mayer 2016). With the recognition of binding jurisdiction of the ECtHR in 1990, political party closure cases from Türkiye such as the United Communist Party (1998), the Socialist Party (1998), and the Freedom and Democracy Party (1999) resulted in Article 11 violations.

In 1998, Refah Partisi was closed down by the TCC after a controversial period in Türkiye’s history, initiated by the Turkish military’s publication of a public memorandum in 1997 demanding that the government implement certain changes and stating that the country’s public institutions must be purged of “reactionary” policies. The military elites demanded, among other things, that the Atatürk reforms such as *laiklik* (secularism) and the dress codes be applied strictly. The military found the actions of the coalition government to be jeopardizing the state. In this period, Prime Minister Erbakan had to resign. The interference of the army was later dubbed the “Post-Modern Coup” due to the

perception that the memorandum amounted to a coup d'état.

This background made the *Refah* case arguably the most high-profile case concerning a political party dissolution to have reached the ECtHR. In addition, Refah was the most popular party in the country in terms of electoral support at the time of its dissolution. In the last general election before its dissolution, it secured approximately 22% of the votes, forming a coalition government in which its leader became the prime minister. This heightened the sensitivity of the case for the ECtHR, as the dissolution of the most popular party in Türkiye had profound implications for democracy and set an important precedent. The Strasbourg Court had to consider the broader impact of this case on the democracy of Türkiye but also on ECHR jurisprudence.

The case also posed a deeper question about the extent to which religious diversity can translate into political pluralism within a democratic framework. The Grand Chamber was faced with a fundamental dilemma: was Refah's alleged vision for legal pluralism and its approach to secularism a legitimate expression of democratic choice, or did it pose a genuine threat to the democratic order of Türkiye?

The Grand Chamber embarked on examining the facts put forward by the national authorities to decide whether the dissolution of Refah was necessary in a democratic society or violated Article 11. The evidence submitted by the government included issues such as Refah's call for the removal of bans on the headscarf in universities and public offices, mentions of legal pluralism in speeches and the hidden agenda of establishing sharia law, and the potential use of political violence during this process.

Headscarf

By the time of the *Refah* case, the ECtHR had already adjudicated several headscarf cases. In these earlier decisions, the ECtHR determined that bans on headscarves were justified by legitimate aims, such as safeguarding the rights of others, and were proportionate within a democratic society. In *Refah*, the Grand Chamber referenced headscarf cases like *Karaduman v. Turkey* and *Dahlab v.*

Switzerland while setting out foundational principles concerning the relationship between democracy and the Convention. While not explicitly expanded upon, this reference subtly alluded to Refah's aimed policy of lifting headscarf bans.

Legal pluralism

As the Grand Chamber also observed, Refah, throughout its political history, never proposed a programme or legislation advocating for a plural legal system. The "Medina Agreement", as described by Refah's President, referred to the early days of Islam when Prophet Muhammad negotiated with Jewish, Christian, and Polytheist communities in Medina to establish a plural legal system granting autonomy to adherents of different religions. Both Turkish authorities and the Grand Chamber deemed such a system incompatible with democracy and with pluralism, which is ironic given that proponents of legal pluralism often argue that such systems are designed to promote "pluralism".

In his concurring opinion, Judge Kovler pointed out that the debate over legal pluralism is not novel, with significant academic discourse on the topic and some countries implementing variations of it. Historically, legal pluralism is a well-established theory and practice. Therefore, Judge Kovler found the Grand Chamber's characterization of legal pluralism puzzling and recommended an anthropological study on legal pluralism.

Sharia

Similarly, Refah, throughout its political history, never proposed a programme or legislation aimed at establishing sharia law. Had it done so, there could have been grounds for a substantive discussion regarding the specific formulation of sharia proposed by Refah and its compatibility with the Convention. Nevertheless, the Grand Chamber's assessment of "sharia" was overly general and precluded such a debate. It broadly claimed that sharia is incompatible with democracy due to its "stable and invariable" nature.

It is unclear what the Grand Chamber means by "sharia". Depending on the context, sharia can refer to an Islamic moral ideal, to Islamic jurisprudence (*fiqh*), or to a specific set of laws adopted by a state. Then again, the judges of the

Grand Chamber are not experts on sharia, Islamic law, or Islam in general, nor are they required to be. At the same time, information regarding sharia is not hidden or novel. There exists a vast body of scholarly literature, expert academics, and numerous academic institutions worldwide devoted to the study of Islamic law in its many forms and historical developments which the Grand Chamber could have utilized. As Judge Kovler pointed out in his concurring opinion, sharia or Islamic law is a legal tradition that goes back more than a thousand years, with many different legal schools co-existing since its inception. A caricature of “sharia” that depicts it as incompatible with democratic principles, as presented by the Grand Chamber, ironically aligns more with the viewpoint of fundamentalists, who want to impose a version of sharia which is invariable and static.

Türkiye, secularism, and democracy

One of the main points the Grand Chamber made in its ruling was the inseparable historical connection between secularism (*laiklik*) and democracy in Türkiye. It argued that the transition from the Ottoman Empire to the Republic was largely facilitated by the principle of secularism.

This is an interesting claim, especially considering that the Turkish Republic was ruled by a single-party regime for its first 22 years, with elections featuring only one party on the ballot. While political plurality, the most basic tenet of democracy, was absent, secularism was regarded as one of the main pillars of the state. Conversely, the Ottoman Empire, which the Court debatably describes as a theocracy, held multiparty parliamentary elections in its final 22 years (Kayalı 1995). Neither regime, however, can be accurately described as a democracy, further indicating that the connection between secularism and democracy in Türkiye is not as straightforward as the Grand Chamber suggests.

Additionally, the Grand Chamber endorsed Turkish secularism (*laiklik*), which is one of the six principles of “Kemalism”, and regarded it to be the founding ideology of Türkiye, as compatible with the Convention and democracy. This stance is controversial given the widespread criticism of Kemalism and *laiklik* for their rigidity toward religious communities. For decades Turkish authorities also

promoted a “religion-free” political arena due to the nationalist-secular character of the state (Moe 2016). In contrast, Europe’s most consolidated democracies accept religious identities within a pluralist political framework. The differing treatment suggests that the ECtHR treats Islam differently than other religions.

Impact and expectations

The issue of political party dissolution was seen as a significant point of incompatibility between Turkish authorities and the Convention system and a crucial hurdle to get over for Turkish democracy. Both the Venice Commission and earlier ECtHR rulings on political freedoms had highlighted this issue (Özbudun and Türkmen 2013).

Refah underscores the risks associated with granting a wide margin of appreciation to states without sufficient European supervision, which had not been the approach in previous political party cases concerning Türkiye. This ruling and its content can be seen as a missed opportunity to recognize “Muslim democrats” within plural, democratic politics (Moe 2016). Additionally, generalized, uninformed, and discriminatory statements about Islam and Muslims harm the legitimacy of the ECtHR, creating doubts about its impartiality in cases revolving around Muslims and Islam.

Literature related to the main issue(s) at stake:

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