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**Analysis of Political Party Legislation
in Tajikistan (2000) (in English)**

Analysis of Political Party Legislation in Tajikistan

1. Background

The recent parliamentary election on 27 February and 23 March 2000 was the first multi-party election in the history of Tajikistan and thus an important benchmark in its democratic development. Tajikistan has a well-developed multi-party system; there were six political parties as well as independent candidates participating in the elections to the Tajik parliament (Majlisi Oli). The Peoples Democratic Party (PDP), which serves as “Presidential Party” for President Rakhmonov, won the election by large a majority and carried the majority of votes in the single-mandate constituencies as well as in the single-republican (party list) constituency. Two other parties passed the 5% threshold for political parties in the single-republican constituency and are represented in the Assembly on grounds of the party list: the Islamic Revival Party (IRP), which was one of the founding organizations of the United Tajik Opposition (UTO), and the Communist Party (CPT).

The landscape of political parties in Tajikistan is the result of the competition of different regional, political, religious and ideological factors. Following the Inter-Tajik Talks, the 1997 General Agreement and the adoption of a new Law on Political Parties by the Majlisi Oli in November 1998, (at least) eleven political parties were formed in Tajikistan. However, prior to the parliamentary elections, activities of political parties were severely restricted and in six cases, parties were banned from participation in the elections¹:

- The activities of the Party of Political and Economical Revival were suspended in April 1999.

- Jumbish (*Junbish?*) - National Movement of Tajikistan was denied registration in April 1999.
- Civil Patriotic Party of Tajikistan Unity was banned in April 1999.
- Agrarian Party was banned in September 1999 due to continued political activities after its suspension in April 1999.
- The registration of the Party of Justice and Progress was cancelled in September 1999.
- Democratic Party / Tehran Platform was deregistered in November 1999 due to a name similar to another party's.

More recently, on December 26th, 2000 Tajikistan's Supreme Court suspended for 6 months the activities of the Adolatkoh ("Justice") Party, which had participated in the parliamentary elections on the "New Opposition"-platform. Adolatkoh's chairman Karimov claimed that this suspension was nothing but retaliation by Tajik leadership for the party's opposition to President Rakhmonov in the 1999 presidential and 2000 parliamentary elections. At present, other political parties feel threatened by the same sort, while deregistered or banned parties struggle to meet the requirements for renewed registration.

These measures were based on claims that opposition parties had violated the Tajik Law on Political Parties. In the cases of the Agrarian Party and the Party of Economic and Political Revival the claim was a fabrication of membership lists, the National Unity Party was banned in the wake of an attempted military rebellion in Leninabad oblast, and the National Movement was reportedly denied registration on the grounds of "insufficient time to study all necessary documentation". The suspension of the Adolatkoh party was primarily based on the allegation that the party had failed to establish primary organizations in each of the country's oblasts.

The formation as well as the banning of political parties in Tajikistan is governed by the mentioned Law on Political Parties (PPL), and to a certain extent by other legal instruments (for example the Constitution, the Law on Public Associations). This review

will try to analyze in which way this legal framework could be used by the government in order to suppress the participation of opposition parties in general elections or in the political life. It is limited to the restrictions that the PPL imposes on the activity of political parties and the possibilities for misuse against political opponents; other relevant legislation is not individually discussed in the following.

2. International Standards

The Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR) both provide that everyone has the right to freedom of opinion and expression (Art. 19 UDHR, Art. 10 ECHR) and the right to freedom of association and peaceful assembly (Art. 20 UDHR, Art. 11 ECHR). These rights put a special emphasis on political expression and association in political parties and are applicable to political parties. Therefore, in the view of both instruments, all government measures that severely limit the activities of political parties (e.g. refusal of registration, suspension or banning of parties) interfere with the freedoms of association and of expression.

The freedom of expression and association is not absolute, however there are very few legitimate restrictions recognized in International Law. Limitations of these rights have to be prescribed by law (Article 29 (2) UDHR, Art. 10 (2) and 11 (2) ECHR). In addition, only such restrictions are admissible that are deemed “necessary in a democratic society”. Particularly, “propaganda for war” and “incitement to religious, racial or national discrimination, hostility or violence” and “interference with the rights of others” may be prohibited. In general, the interpretation of these admissible restrictions is very strict and when it comes to the banning of political parties, very little interference with the freedoms of expression and association is tolerated. As an example, the European Court of Human Rights, in its precedents regarding the banning of political parties² says that freedom of political expression by political parties is the very source of a democratic society and that therefore any hindering of a political group needs to be justified by reasons that are of the highest importance for the society as a whole.

According to the Constitution of Tajikistan, international legal acts recognized by Tajikistan are a constituent part of the legal system of the republic (Art. 10 Const.). The Civil Code elaborates on this provision, adding that both principles of international law as well as express agreements signed and published officially apply as part of the Tajik legal system (Art. 7 part 1 Civ.). The Constitution and the Civil Code both expressly state that in the case of a conflict between national and international law, international law shall prevail. The Universal Declaration of Human Rights is a standard in international law that is recognized throughout the world; its rights are considered principles of international law. The European Convention on Human Rights applies in 41 member states; although Tajikistan is not a member state, its provisions and its interpretation by the European Court on Human Rights can be seen as an important guideline in international law.

3. General Observations on the Law on Political Parties

The PPL was adopted in 1998 and significantly modified during the period leading up to the parliamentary elections in Spring 2000. It now reflects the situation after the civil war which was marked by the legalization and registration of the parties that formed the UTO, namely the Islamic Revival Party and the Democratic Party (DPT) in 1999. The PPL reiterates the constitutional right to form, join and leave political parties (Art. 28 Constitution, Art. 1 PPL). However, both texts reserve this right exclusively to Tajik citizens, thereby creating potential conflicts regarding the representation of binationals and stateless persons. In addition to this, any activity of foreign political parties is prohibited on the territory of the republic (Art. 3 PPL).

Political Parties are defined by the Tajik PPL as public entities which aim at participating in public political life, at participating in the creation and execution of state power by impacting citizens' political convictions, and at participating in elections and the activities of state power. Tajik Law gives to Political Parties the status of a legal entity or

“legal person” as defined in Art. 48 of the Tajik Civil Code (Civ). Political Parties rank as public associations, which are regulated by the Tajik Law on Public Associations (Pub.Assn) as opposed to private associations.

The PPL is divided into five chapters:

- **Chapter I: General Provisions** (Art. 1 and 2) includes the right to association and a definition of political parties.
- **Chapter II: Establishment and Activities of Political Parties** (Art. 3 – 9) states the requirements for the establishment and registration of a party.
- **Chapter III: The Rights of Political Parties and Forms of Control of their Activities** (Art. 10 – 16) mainly deals with party finances and donations to parties.
- **Chapter IV: Participation of Political Parties in Elections** (Art. 17 – 19) elaborates on the right to participate in elections that is stated in Art 10 PPL.
- **Chapter V: Suspension, Cessation and Ban of Activities of Political Parties** (Art. 20 – 23) deals with voluntary and involuntary termination of parties.

In this report, the provisions regarding party financing are not taken into account; although it is easily conceivable that the government might try to regulate party activities through these provisions, it cannot be denied, on the other hand, that the regulation of party finances is highly controversial throughout the world. Therefore, and especially since data concerning party financing in Tajikistan is very limited, an in-depth discussion of these provisions in the PPL would overburden this analysis.

4. Establishment of Political Parties

4.1 Registration Requirement

Under Tajik law, all political parties must register with the Ministry of Justice before they can undertake any kind of political activity. In fact, a party is only considered as established and acquires the status of a legal person after accomplishment of the registration procedure (Articles 3 and 7 PPL). These provisions raise some general questions regarding party registration. Whether or not a party should be required to register is a disputed issue and there are in fact good reasons for this requirement (eg. control of party funding, the possible misuse of party names) as well as against it (the danger of state control over the political opposition)

There are two aspects of the way the registration requirement is drawn up in Tajik law which seem especially troubling: As mentioned, political parties only come into existence with their registration. They can therefore not own any property before the registration process is accomplished and are severely limited in their possible political action. In many other countries where party registration is required, the registration procedure does not have quite the same effects. For example, there is a party registration procedure in Australian law. However, a party is not required to register with the authorities in order to come into existence; if it doesn't register, it is simply excluded from certain privileges, such as a party list on election ballots or public funding. Similarly, under the new British election law (the Political Parties, Elections and Referendums Act 2000 and the Registration of Political Parties Act 1998) the effects of party registration are limited to the rights to field candidates in general elections, to benefit from party broadcasts and to security at party conferences. The effects of party registration under Tajik law are far greater than this; the refusal of registration quite simply denies any sort of political activity to a party.

Secondly, in order to acquire the status of a legal person, an association has to register with the "appropriate organ of government" (Art. 51 Civil Code). In the case of political parties, the appropriate organ is the Ministry of Justice (Art. 7 PPL). This attribution of competence could raise doubts about the impartial nature of the registration process: it seems preferable to give the registration authority to a more neutral institution (possibly in the judicial branch) rather than to a government ministry. In Great Britain for example,

it is the registrar of companies who registers political parties; in Turkey, it is the State Counsel at the Court of Cassation; in Germany, where there is no legal registration requirement, the commercial courts are charged with the registration of party names.

4.2 Requirements for Registration

The Law on Political Parties sets several criteria for the creation of political parties that seek registration by the Ministry of Justice. These criteria involve the party membership, include numerous restrictions and outline certain formalities.

The first sentence of **Art. 3 of the Law on Political Parties** states that only *national* or *republican* parties (*translations of this phrase are incoherent*) can be founded in the Republic of Tajikistan. Thereby the Act restricts the establishment of political parties that limit their activities to certain parts of the Tajik territory (regional or local parties). On the other hand, Art. 10 PPL gives registered parties the right to establish *branches* and *representations*, which can be seen as a right to create regional or local subdivisions. In this aspect, the PPL differs greatly from the situation in many western countries, where the creation of regional or local parties is not only permitted, but where national parties are also established in most cases as a union of local party organizations. If indeed the existence of a national organization is necessary for the registration as a political party, this seems like a great obstacle to the creation of parties by groups of citizens living in certain parts of Tajik territory (e.g. ethnic or religious minorities). Also, the possibility to create parties for the sole purpose of participation in local elections is severely restricted. However, the citizens of a certain town for example should have the right to form parties in order to participate in municipal elections.

This problem is enhanced by the fact that a provision was added to the law which requires that all parties seeking registration need at least 1000 supporters from "the majority of cities and regions" of Tajikistan (Art. 3 PPL). Unfortunately, there is no further elaboration on this provision, and it remains unclear from how many and which of the cities and districts the supporters have to come and how their residency is proven.

Due to this uncertainty, the provision could easily be used to refuse registration of unwanted new parties on the grounds that their membership doesn't reside in the majority of cities and regions. Also, the number of 1000 supporters (which a party has to have prior to its actual creation!) appears to be a rather steep barrier to the formation of new parties.

Furthermore, the law requires parties to set up regional ("primary") organizations within three (*one??*) months of their registration in the majority of cities and regions, again without detailing where these organizations should be established and what the consequences of not complying with this requirement are. Art. 8 PPL clarifies the matter of how the local structures of a party should be organized somewhat by stating that they must be formed in accordance with the party's statute. Unfortunately, it doesn't seem that there is any administrative text or judicial precedent that details in which and how many of the republic's oblasts and towns primary organizations must be formed. Nevertheless, the recent suspension of the Adolatkoh party by the Supreme Court on 26 December 2000 was primarily based on a violation of this provision in Art. 3 PPL. The Court has the power to suspend party activities on grounds of a violation of the laws of Tajikistan by the party (Art. 20, 21 PPL, cf. below Sect. 5.1). It is difficult to discuss this Court decision, which is unavailable in English. However, the provision in Art. 3 PPL about the establishment of primary organizations seems like a very vague and ambiguous basis for such a measure. The uncertainty of the text allows for a very large margin of appreciation by the court, which could be used against unwanted opposition parties.

Article 4 of the Law on Political Parties sets restrictions on the formation and activities of political parties: parties are disallowed if they aim at a forcible overthrow of the constitutional system, at inciting national, social and religious hostility (*probably also "regional hostility" (cf. Election Adjud. Manual – 1.2.b.2.c) - translation of the current text of Art. 4 is incoherent*), if they are involved in religious organizations or created within an executive body (eg. the armed forces, the customs authorities, the state security or the judiciary). It appears that if a party doesn't abide to any one of these restrictions, the Ministry of Justice can refuse its registration on the basis that the party statute

violates the Law on Political Parties (Art. 9 PPL). Part 1 of Article 4, which prohibits the forcible overthrow of the constitutional system and the incitation of hostility, is also a ground for the judicial ban of an existing party and is discussed below in Sect. 5. The prohibition of any involvement of political parties in religious organizations (Art. 4 part 2 PPL) seems very ambiguous, as it doesn't specify whether the party itself or its members aren't allowed to be "involved" and what is meant by the term involvement (*to a certain degree, this uncertainty could result from my revision of a translated text*). In fact, a charter provision proclaiming that a party follows the principles of Islam could be seen as involvement in a religious organization, as well as a mention of the terms Muslim or Islamic in a party's name. The addition of the phrase to the text of the PPL in 1998 was seen as a clear attempt to keep the UTO-parties from re-registering after being banned during the civil war period. However, the Islamic Revival Party was allowed to register in 1999 and to participate in the 2000 elections. Still, the vagueness of the text gives a large margin of interpretation to the Ministry of Justice in establishing if a party statute violates the provisions of Art. 4 PPL.

Art. 5 of the Law on Political Parties concerns the party membership: it reiterates that membership in any political party is voluntary and that foreign citizen and stateless persons can't be party members. It also prohibits judges, public prosecutors, servicemen and representatives of the ministries of Interior, State Security, Tax Police, Customs and Justice from being members in political parties. Party membership is limited to natural persons who are at least 18 years old. The law also hints at a registration requirement, but doesn't detail whether individual members also have to register with an organ of state or merely the party administration.

In the past, many measures against opposition parties have been based on claims of fabricated membership lists. Articles 3 and 7 PPL require the submission of a membership list with at least 1000 members for the registration of the party; however, there doesn't seem to be a requirement for updating this list or keeping the Ministry of Justice informed about the current membership status in the Law on political parties. As membership in political parties is subject to change, it is questionable how the Supreme

Court can base suspension orders on the fact that membership lists submitted during the registration process do not reflect the present membership status of registered parties. It is also questionable what the consequences of a decline in membership after registration are, since the membership of 1000 persons is only a condition for a party's registration. There are reports about party members being questioned by the authorities to establish their party membership; the opposition parties claim that party members have denied their membership out of fear of discrimination and disadvantages. These uncertainties indicate that the provisions about membership in the Law on Political Parties need to be revised.

Every political party must adopt a Statute or Charter in a founding meeting (Art. 3 PPL). The content of this statute is described in **Art. 6 of the Law on Political Parties**; it must contain the name, purpose and the goals, its party structure and all necessary rules for the internal organization of the party (the list in Art. 6 names mainly the conditions of membership, internal elections, modifications of the statute, party finances and others). The list of items that need to be included in the Statute is extensive, but it seems that all items mentioned actually merit to be laid down in the statute. The law prescribes how the statute should be adopted, but not how the party should be organized internally. Apart from the statute, parties are obligated to publish a platform or program (Art. 2 PPL); unfortunately the law doesn't define by what means of publication or what the consequences of non-compliance are.

4.3 Registration procedure – Refusal of registration

In order to be registered, a party must file an application with the Ministry of Justice (*possibly within one month after its creation at the founding congress*) (**Art. 7 PPL**). This application has to be signed by a person authorized by the founding meeting and must include the following:

- a copy of the party statute,
- the minutes of the founding meeting,

- the legal address of the party,
- the names and addresses of at least 10 founding members,
- a copy of the newspaper announcing the convening of the founding meeting,
- proof of payment of the state duty, and
- a list of a minimum of 1,000 party members.

The law unfortunately does not determine the amount of the deposit or state duty that must be made by a new party before it applies for registration, indicating only that it is to be determined by the government.

The law forbids the Ministry of Justice from demanding any other documentation for registration and sets a timeframe of one month after submission of the required documents, during which the Ministry has to decide about the application. Although the law explicitly states that this timeframe must not be violated, there have been complaints by opposition parties that the Ministry takes unduly long for processing applications for registration. Unfortunately, the law doesn't attach any consequences to a violation of the timeframe by the Ministry. It should at least be possible for a party to appeal to the courts if a decision about the demand for registration isn't made within one month.

As mentioned above, **Art. 9 of the Law on Political Parties** allows the Ministry of Justice to refuse to register a party if its charter contradicts the Constitution or the laws of Tajikistan or otherwise fails to conform to the requirements for a party charter listed in Art. 6 PPL. Other reasons for refusal of registration are a violation of Art. 3, part 2 (public announcement of the party's founding meeting) or Art. 7, part 5 (payment of registration dues), the fact that another party is already registered under the same name or that the legal address of the party is outside the territory of the republic. Curiously, the law doesn't mention that registration may be refused if the required documentation for the application isn't submitted completely or otherwise doesn't meet the standards set in Art. 7 PPL. However, the Ministry obviously checks the required documentation, since applications for registration have been refused on that basis. Also, the fact that the Ministry establishes whether or not the statute of a party contradicts the constitution and

other legislation raises some doubts – such a power of discretion can only be justified if there's a valid judicial appeal against a refusal of registration.

A decision by the Ministry of Justice refusing registration presumably can be appealed to the Supreme Court. The matter is slightly uncertain because the Law on Political Parties permits appeals against such decisions (Art. 9 part 2 PPL) but doesn't indicate which court has jurisdiction to hear such appeals. However, a political party is a species of public association, and the Law on Public Associations (Art. 15 Pub.Assn) gives the Supreme Court power to hear appeals against decisions refusing a registration of associations.

5. Participation in Election Process

6. Information Requirements

7. Provisions regarding Suspension and Ban of Political Parties

The fifth chapter of the Law on Political Parties (Art. 20 – 26 PPL) deals with the termination of parties. Apart from the termination decided by the party itself (through liquidation or reorganization by merger or division), the law provides two possibilities for involuntary termination of a political party by the country's Supreme Court (Suspension and Ban).

7.1 Suspension

A registered political party can be suspended for a period of up to six months by decision of the Tajik Supreme Court if it violates the Constitution or any other legislation *or if it receives financial or political help from abroad* (Art. 20 PPL). Prior to the suspension

procedure, the Ministry of Justice or the Prosecutor General has to issue a warning and ask the party to cease the illegal conduct or contact. If the party doesn't comply within 10 days, the suspension procedure before the Supreme Court is *engaged*. If the Supreme Court orders a suspension, the party loses its status as a legal person and isn't allowed to organize meetings, demonstrations or other public measures or to participate in elections. The suspended party also loses its right to own mass media and isn't allowed to use its bank accounts, except for the payment of contractual obligations and fines (Art. 21 PPL).

The consequences of a suspension order are obviously very severe for the suspended party. It practically ceases to exist for a period of 6 months, and has to be recreated after that period. The effects of a suspension are further aggravated by the fact that continued illegal activity during the period of suspension is a reason for the termination or ban of a party (Art. 23 PPL, see below). On the other hand, the grounds for ordering a suspension in Art. 20 PPL seem to be immeasurably large: if any violation of the laws of the republic is enough to earn a suspension, then a party could conceivably be suspended if a party official gets a parking ticket at a party conference. Art. 20 PPL doesn't relate in any way to the political activities of the party, which means that a party could be suspended for any illegal behavior that would normally result in a fine or not be punished at all. It seems that the practice of the Supreme Court in the past has been to order suspensions of political parties mainly for violations of the Law on Political Parties. The Party of Economic and Political Revival was suspended on grounds of fabricated membership lists. The same reason was given for the suspension of the Adolatkoh Party, which was additionally based on the party's failure to meet reporting requirements listed in the Law on Political Parties and to establish primary organizations. Even if the court's practice continues to limit orders of suspension to cases where the Law on Political Parties was violated, it still seems like a very harsh punishment for the violation of certain administrative requirements. It would be a less of a restriction on the freedoms of expression and assembly to punish such conduct by a party by means of fines or the revocation of certain rights (eg. access to mass media), as it is the practice in most western democracies.

Finally it doesn't seem very clear how a suspended party is supposed to discontinue the illegal conduct for which it was suspended, if this conduct has to do with meeting the requirements for party registration. If, for example, a party is suspended because it doesn't have 1000 members (anymore), then how should it recruit additional members while it can't organize meetings, rallies or other public measures during the period of suspension?

7.2 Ban

The Supreme Court can order a political party terminated if its activities violate Art. 4 part 1 PPL or if it carries out illegal activities after being suspended by the Supreme Court (Art. 23 PPL).

The first reason that justifies a party ban (violation of Art. 4 part 1 PPL) refers to the restrictions on the establishment and activities of parties mentioned above. In Article 4 part 1, the Law on Political Parties closely follows the constitution which states that "the establishment and functioning of social associations that encourage racism, nationalism, social or religious hostility or hatred, or advocate the forcible overthrow of the constitutional system and the formation of armed groups is prohibited" (Art. 8 part 5 of the Constitution of the Republic of Tajikistan). Curiously however, the interdiction of encouraging racism is replaced by an interdiction of encouraging regional hostility in Art. 4 PPL.

(From my text of the PPL, it is not entirely clear if the reference to Art. 4 part 1 in Art.23 PPL also includes the interdiction for parties to be involved in religious organizations (see above Sect. 3.2), or if that addition to the text of Art. 4 is actually considered Art. 4 part 2!)

All of these restrictions on the activities of political parties restrict the freedom of expression, association and assembly. They reflect, on the other hand, the need to defend democracy against its own enemies. This need is felt in many countries and reflected in their constitutions and particularly in those that have emerged from an authoritarian

system. There is much to be said in favor of the constitutional “weapon” of a party ban against parties that actually favor the violent overthrow of a democratic system. Then again, it can be argued that democratic societies should fight democracy’s enemies on the field of political argument and not by administrative measures. If one accepts the necessity of an instrument like a party ban against “undemocratic” parties, then the text of Article 8 of the Constitution (and of Art. 4 part 1 PPL) doesn’t leave much room for criticism, since it is in fact quite specific and well drafted.

However, much of the credibility of a party ban depends on the close observation of procedural rules and a certain self-restriction (*constraint?*) on the part of the courts in interpreting such notions as “encourage nationalism” or “the forcible overthrow of the constitutional system”. It seems that so far, Tajikistan’s Supreme Court hasn’t invoked a violation of Art. 4 part 1 PPL in the banning of a political party (*possibly in the case of the National Unity Party*). This may be due to the fact that the law provides ample possibilities to suspend parties without having to resort to Articles 4 and 23 PPL. It remains to be seen if the Court’s practice recognizes that the process of banning a political party should be a last resort only to be used in exceptional circumstances.

The second ground for banning a party is that the party carries out illegal activities after being suspended in accordance to Art. 20 PPL. Departing from the translated version of the law, the scope of this provision is not entirely clear: It could mean that a party can only be banned, if it continues the conduct for which it was suspended in the first place. On the other hand, it could also mean that a party can be banned if it executes any of the activities prohibited in Art. 21 PPL (meetings, demonstrations, use of party funds) during the period of suspension. Thirdly, the sentence could be construed very extensively: then any illegal behavior (again, the parking ticket at the party conference) during the period of suspension would be enough to justify a party ban. As explained above, the whole suspension process raises doubts and should probably be abolished – this is even more so with it being one of the two grounds for the definite termination of a political party by court order.

8. Recommendations

- The concept of allowing only **national parties**, as set down in Art. 3 PPL, seems questionable. At least, the details of this requirement need to be more clearly defined. This is especially the case for the requirement of setting up primary organizations throughout the country.
- **Membership:** The condition that party members have to live throughout the country is very unclear and also unnecessary. Reports that the membership lists that were submitted to the Ministry of Justice have been used for the intimidation of party members are unsettling.
- The influence exerted by the Ministry of Justice over the formation of political parties through the **registration process** should be diminished. As explained, the whole nature of the registration requirement, the reasons for refusal and the involvement of the Ministry of Justice should be revised.
- The possibility of **suspending political parties** over simple illegal conduct seems ill conceived. In its present form, it gives the Supreme Court unlimited possibilities to practically shut down political opposition. It is questionable if there is a real need for an independent suspension process aside the termination procedure.

¹ Source: OSCE/ODIHR Final report on the 27 February 2000 Elections to the Parliament in the Republic of Tajikistan, Warsaw 17 May 2000.

² European Court of Human Rights; Judgment of 25 May 1998 in the Case of Socialist Party and others v. Turkey; see also Vogt v. Germany, 3 July 1997; Saidi v. France, 26 Sept 1995; United Communist Party of Turkey v. Turkey, 30 Jan 1998.