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TOLERANCE, PROHIBITION OF POLITICAL PARTIES AND THE ECTHR

Is the European Court of Human Rights (ECtHR) tolerant of extremist political parties? In interpreting Article 11 of the European Convention of Human Rights which enshrines the freedom of assembly and association, the Court is concerned with this issue. This article critically discusses some of the theses put forward in the Court's judgments. It aims to check some of its perspectives and bring philosophical nuances regarding tolerance. Tolerance can help build a plural and free-thinking society that is so important for the realization of political and democratic rights. The Court's agreement to ban only two political parties allows us to reflect on the willingness to listen to more extreme political convictions, even if they bother, shock and harass the public sphere.

Keywords: *Dissolution of Political Parties, European Court of Human Rights, Freedom of assembly and association, Political Parties, Tolerance*

1. INTRODUCTION

This article will examine the role of Tolerance in European Court of Human Rights (ECtHR) decisions on the dissolution or prohibition of political parties. *Tolerance is* a great philosophical idea for dealing with political movements that are challenging and hostile to legality within the public sphere. Research on tolerance has been carried out mainly by philosophers in the field of religion and diversity (Locke 2003; Leiter 2012; Popper 1994), but have a deep relationship with political ideology. I will rely on their analysis and then examine the cases decided by the (ECtHR) on the dissolution or prohibition of political parties.

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1.1. Methodological Note

To carry out the examination that this article proposes, I will use the inductive method. This is because I will take the cases decided by the European Court of Human Rights (ECtHR) to reach a general conclusion on tolerance. Broadly speaking, the inductive method is the practice of reasoning that, after considering enough particular cases, concludes a general truth. Induction, unlike deduction, is part of private data for a general inference (see, for exemple, Sider 2010, 50; Tomassi 1999, 8).

By promoting legal observation of cases prohibiting political parties judged by the ECtHR, it will provide me with a secure basis through legal propositions to conclude how lenient the Court acts regarding the prohibition of political parties.

Another methodological issue that is clarified at the outhem of the case is the choice of cases. The ECtHR maintains a Factsheet – Political parties and associations, May 2022 (2022) containing cases relating to Political Parties and Associations. In this document, in addition to issues on the role, registration, funding, inspection, freedom, congresses, there is a specific topic on dissolution or prohibition of political parties and associations with the updated list of cases. Only cases of prohibition of political parties will be analyzed in this paper.

Finally, I would like to clarify that I have chosen the case-law of the ECHR in this case study because it is an international court, established by the Council of Europe, which delivers mandatory judgments for 46 Member States. Democracies in Europe are obliged to comply with their jurisprudence on freedom of assembly and association including the treatment of political parties. In recent decades there has been a proliferation of judgments of this court on how far political parties with constitutional enmity that were eventually banned or dissolved by their domestic court can be tolerated (see, for example, de Morree 2016; O'Connell 2020). There is therefore plenty chance to examine the development and practical application of tolerance in the domestic jurisprudence of European democracies.

2. PROHIBITION OF POLITICAL PARTIES IN THE PRACTICE OF THE ECTHR

2.1. Identification of the provisions analysed by the ECtHR

Party ban measures have been used sparingly in Europe. Acoording to Bourne and Bértoa (2017, 10) there were a total of 52 cases of banning parties in 37 European democracies in the post-World War II period. It is easy to observe that states with rules on the dissolution of parties almost never invoke them in honor of political freedoms. In the meantime, it is also noted that Turkey – a member of the Council of Europe – which has banned around twelve political parties in recent decades, deviates from the prevailing European approach, according to which political parties are banned or dissolved only in exceptional cases.

The European Convention on Human Rights, hereinafter referred to as "the Convention", is a regional treaty aimed at establishing a unified regulation of the protection of human rights in the Member States of the Council of Europe. There are no provisions of the Convention on issues of dissolution of political parties. Meanwhile, ECtHR underlined the fundamental role played in a democratic system by political parties entitled to freedoms and rights enshrined in Article 11 (freedom of assembly and association) and Article 10 (freedom of expression) of the Convention.[1] However, it considered that those freedoms guaranteed by the Convention could not deprive the authorities of a State in which a political party punishes the institutions of that State of the right to protect those institutions.[2] [3]

[1] As emphasized by Tyulkina (2015, 97) Not only do provisions of the European Convention on Human Rights hint at the presence of a militant democracy spirit, but also the analysis of the Court's jurisprudence on the dissolution of political parties clearly indicates that militant democracy is an explicit feature of European law.

[2] 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are pre-scribed 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, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

[3] 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without in-

It is these two provisions (Article 11 and Article 10) that will be the subject of the analysis by the ECtHR that will be described below.

2.2. Cases of Tolerance

In the ten cases heard by the ECtHR in which the national courts of the Member of the Council of Europe banned a particular political party, in only two cases the court ruled that there was no breach of Article 11 of the Convention. In eight other cases, the court found that there was a breach of the right of association.[4]

I will make a report of the grounds of the ECtHR on these ten cases, starting with those who understood that there was a violation of the Convention by the domestic courts. In the end, I will explain the two cases where the ECtHR agreed with the domestic court in banning the political party.

One of the common reasons for the rulings was that 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 favorably 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 entitles political parties to seek the protection of Articles 10 and 11 of the Convention.[5]

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terference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

[4] There are, in fact, twelve specific cases concerning the dissolution of political parties and Article 11 of the Convention. However, I excluded two from that analysis because it is a case of association, not of a political party (Vona v. Hungary, App No 35943/10, ECTHR, 9 July 2013), and another Court declared the application inadmissible to be manifestly ill-founded. (Nationaldemokratische Partei Deutschlands NPD vs. Germany, App. no. 55977/13, ECtHR 04 October 2016).

[5] ECtHR, *United Communist Party of Turkey and Others v. Turkey* (Judgment), 1998, para. 43. See also ECtHR, *Socialist Party and Others v. Turkey* (Judgment), 1998, para. 41; ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* (Judgment), 1999, para. 37; ECtHR, *Yazar and Others v. Turkey* (Judgment), 2002, para. 46; ECtHR, *Re-*

The ECtHR has therefore repeatedly proclaimed that political pluralism underpins a democratic system, basing its principles on the importance of freedom of expression in a society that claims to be democratic.

Similarly, it was common for some judgments concerning the prohibition of political parties that ECtHR considered that "The State as the ultimate guarantor of the principle of pluralism".[6] Only convincing and compelling reasons can justify restrictions on such parties' freedom of association. The Court considers one of the main characteristics of democracy to be 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 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, capable solutions of satisfying everyone concerned.

In the cases *Socialist Party and Others V. Turkey*, and *Freedom and Democracy Party (OZDEP) v. Turkey*, the Court added that: "The fact that such a political programme is considered incompatible with the current principles and structures of the Turkish 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 organized, provided that they do not harm democracy itself".[7]

In *Yazar and Others v. Turkey*, the court went further in the demonstration of *tolerance*. It was point out that a political party may campaign for a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic, and secondly, the proposed change must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to

fah Partiwsiw (The Welfare Party) and Others v. Turkey (Judgment), 2003, para. 89; ECtHR, application no. 46626/99, *Partidul Comunistilor (Nepeceristi) aungureanu na v. Romania* (Judgment), 2005, para. 45; ECtHR, *Herri Batasuna and Batasuna v. Spain, Spain* (Judgment), 2009, para. 76.

[6] ECtHR, *United Communist Party of Turkey and Others v. Turkey* (Judgment), 1998, para. 44.

[7] ECtHR, *Socialist Party and Others v. Turkey* (Judgment), 1998, para. 47; ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* (Judgment), 1999, para. 41.

violence or put forward a policy which does not comply with one or more of the rules of democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognized in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds. Moreover, the Court considers that, even if proposals inspired by such principles are likely to clash with the main strands of government policy or the convictions of the majority of the public, it is necessary for the proper functioning of democracy that political groups should be able to introduce them into public debate in order to help find solutions to general problems to general problems of all persuasions.[8]

Regarding case *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, the Court said that cannot accept the Government's argument that Romania cannot allow the emergence of a new communist party to form the subject of a democratic debate. Accordingly, a measure as drastic as the refusal of the applicants' application to register the PCN as a political party, before its activities had even started, is disproportionate to the aim pursued and consequently unnecessary in a democratic society.[9]

The view in this case is that the requirement to register political parties is not necessarily in contradiction with the fundamental principles of democracy. However, states do not have unlimited discretion in relation to the parties they wish to register. Refusal must be necessary in a democratic society and must meet the proportionality test.

In case *Hadep and Demir v. Turkey* the court practically repeated the arguments previously settled in cases involving Turkey, regarding party pluralism and freedom of expression, but added on the facts of the case that "Even if HADEP advocated the right to self-determination of the Kurds, that would not in itself be contrary to democratic principles and could not be equated to supporting acts of terrorism. Taking such a stance would imperil the possibility of dealing with related issues in the context of a democratic debate.[10]

In the *case of the Republican Party of Russian v. Russia*, the Court held that there had been a violation of Article 11 of the Convention on account both of the authorities' refusal to amend information about

[8] ECtHR, *Yazar and Others v. Turkey* (Judgment), 2002, para. 58.

[9] ECtHR, application no. 46626/99, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* (Judgment), 2005, para. 55.

[10] ECtHR, Application No. 28003/03, *Hadep and Demiwr v. Turkey* (Judgment), 2011, para. 79.

the applicant party in the State register and of the party's dissolution. With regard to the latter, it found that the Russian courts had not adduced relevant and sufficient reasons to justify the interference with the applicant party's right to freedom of association and the party's dissolution for failure to comply with the requirements of minimum membership and regional representation had been disproportionate to the legitimate aims cited by the Russian Government. In particular, in the Court's view, there would be means of protecting Russia's laws, institutions and national security other than a sweeping ban on the establishment of regional parties.

In the most recent case, *Nationaldemokratische Partei Deutschlands (NPD) v. Germany,* in fact, there was no merit decision, as The Court declared the application inadmissible as being manifestly ill-founded, finding that sufficient remedies had been available to the NPD at the national level, which had enabled it to effectively enforce its rights under the Convention.[11]

2.3. Cases of Intolerance

On the other hand, the two judgments which declared that Article 11 of the Convention was not in breach – that is, the domestic court's decision to prohibit that political party without affecting the freedom of assembly and association – were based in the following way.

In *Refah Partisi (The Welfare Party) and Others v. Turkey* the court pointed out that 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. The Court considers that a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent.[12]

[11] ECtHR, Application no. 55977/13, *f Nationaldemokratische Partei Deutschlands (NPD) v. Germany*, 2016towards. 26–27.

[12] ECtHR, Application No. 55977/13, *Refah Partiwsiw (The Welfare Party) and Others v. Turkey*, 2016, para. 102. In this case, in May 1997 the public prosecutor

In this landmark case, the ECtHR ruled that the actions of political parties in a democracy must meet two requirements: a) their methods must be legal and democratic, and b) their aim must conform to fundamental democratic principles. Concluding that this party did not meet either requirement: 1) the party refused to renounce violence and even advocated it in certain respects (see paras. 129–131) and 2) working for the introduction of sharia goes against the "fundamental principles of democracy" (see paras. 116–127). The ECtHR held that certain aspects of Sharia are not in accordance with fundamental democratic principles.

Following Molier & Rijpkema (2018, 401) two elements are important in the Court's reasoning from the Refah case. First, a risk calculation test, based on a 'risk to democracy' rationale, with a high threshold ("sufficiently imminent"), is an integral part of the ECtHR's treatment of party bans. Second, the ECtHR seems to suggest that this threshold is met when there is a reasonable risk that an antidemocratic party could seize power and start executing its program – but not much earlier. This was also the main reason for the recent decision of Germany's Federal Constitutional Court (FCC) to not ban the NPD.[13] For the FCC, the NPD party, although considered undemocratic, did not have the material conditions to achieve its goals of disturbing the free democratic order, given little popular support.[14] In fact, what apparently happened was an approximation of German jurisprudence to the reasoning of the ECtHR.

In another case, the well-known case of Herri Batasuna and Batasuna v. Spain, the conduct of the members of that party bears a strong resemblance to explicit support for violence and the praise of persons apparently linked to terrorism.

On this case, historically, since democracy returned to Spain in 1975, the Spanish government has pursued a policy of accommodation to Basque nationalists. However, autonomy policies failed to prevent separatist violence. The ETA militant group has been linked to more

filed a lawsuit with the Turkish Constitutional Court for the compulsory dissolution of the party on the grounds that it had become a center of activities contrary to the principles of secularism. In January 1998, the Constitutional Court dissolved the Refah Party (see Bratza 2013, 38–41).

[13] See BVerfG, 2 BvB 1/13, National Democratic Party II, 17 January 2017.

[14] Even because, following 259) "from the point of view of any democratic theory, it seems hard to deny that banning a party that has grown strong is normatively more harmful than outlawing a fringe party".

than 800 deaths since 1968. Despite conciliatory efforts, the killings and bombings persisted. The Spanish government has considered Batasuna an integral part of the terrorist problem because the party does not condemn ETA's actions. Furthermore, Spain claimed that some individuals had concurrent membership in both ETA and Batasuna (Ayres 2004).

It may also be considered capable of provoking social conflict between supporters of the candidate parties and other political organizations, in particular those in the Basque Country. Moreover, the ECtHR cannot consider that the impugned conduct was covered by the protection afforded to freedom of expression, as claimed by the applicant parties, since the methods used fell outside the bounds set by the Court's case-law, namely the lawfulness of the means used to exercise that right and their compatibility with fundamental democratic principles.[15]

In both the Refah and Batasuna cases, it was understood that the programme of a political party is not the only criterion for determining its objectives and intentions. In other words, several factual aspects of party leaders' actions can motivate the ban of a political party. Even because it is difficult to think that nowadays, any party will write totalitarian or violent objectives in its statutes.

From this description of the case-law, it is clear that freedom of association and political pluralism are highly valued by the ECtHR. The Turkish State has violated the Convention several times by banning parties with a Kurdish agenda (such as the Communist Party, the Socialist Party, OZDEP, HEP and DEP). However, in the Refah case, the Court moved away from the established jurisprudence and its broad interpretation of freedom of association and party ideology, which includes the right to defend changes incompatible with the national constitution. In this case, the changes promoted by a political party with strongly Islamic ideology, and the changes aim to expand the inclusion and accommodation of the religious preferences of a predominantly Muslim population, the ECtHR sees such proposals as a threat to democracy.

As suggested by Jovanovic (2016 754), ECtHR developed in its practice a general line of reasoning, according to which 'only serious breaches of what may be labelled as a code of conduct in a democratic society may serve as a pretext for a ban on a political party. The thresh-

[15] ECtHR, Applications us. 25803/04 and 25817/04, *Herri Batasuna and Batasuna v. Spain, Spain* (Judgment), 2009, paras. 86–87 (see Ayres 2004, 99–114).

old of seriousness was achieved in the court's view when a party produced an "imminent danger" for democracy.

3. TOLERANCE

Locke claimed that freedom of thought and expression were essential components of human dignity, and that these freedoms should be protected by the state (Locke et al., 2003). Therefore, the state had no right to impose religious beliefs on its citizens and that people should be free to practice their religion without interference from the state. He further argued that the state had a duty to tolerate different beliefs and opinions, even if it did not agree with the majority opinion. He believed that this was necessary to maintain peace and order in society and to avoid the kind of religious wars that had plagued Europe for centuries.

In a Letter Concerning Toleration (2003), Locke concluded that the state should tolerate all religions that did not pose a threat to public safety. Similarly, the state should not use religious criteria when making political decisions, and religion should be strictly a matter of personal consciousness. Locke's ideas on toleration emphasised the importance of freedom of thought and expression, and the need for the state to tolerate and respect beliefs and opinions.

Contemporarily, on philosophical ideas of tolerance, Leiter initially argues that tolerance, as an ideal, can only matter when a group is actively uneasy (2012, 8). Recalling Locke's ideas, Leiter maintains that the coercive mechanisms of the state are inadequate to affect a real change in beliefs about personal matters. The same applies to political tolerance as well. It is difficult for us to imagine that state coercive mechanisms change a particular group's conception of a political ideal. In contrast, stamping a political opponent as an enemy of democracy may have the reverse effect, with the sanctioned group obtaining high electoral dividends.

Regarding the importance of a tolerant society, Leiter (2012, 19) takes up Mill's argument that tolerance is necessary because (1) discovering truth (or believing what is true) contributes to general utility and (2) we can only discover truth (or believe what is true) in circumstances where different beliefs and practices are allowed to flourish. Truth discovery requires not only that we are exposed to different

beliefs but that the value of different ways of life must be practically proven through life experiences.

According to Mill (2011) aspects of tolerance are deeply influenced by individual freedom and the need to protect minority opinions and dissenting voices. He argued that individuals should be free to express their opinions and beliefs, even if they did not agree with majority opinion. He believed this was necessary in order to avoid the suppression of new and potentially valuable ideas. Tolerance meant not only the absence of government coercion, but also a willingness on the part of individuals to listen to and engage with opinions different from their own. The free exchange of ideas was essential for the growth of knowledge and the progress of society. However, MILL equally recognised that there were limits to tolerance. Individuals should be free to express their opinions as long as they did not harm others or incite violence.

As Suggested by Drerup and Kühler (2009, 1) toleration is considered as one of the core values of liberalism. In our liberal societies, characterized by deep disagreements concerning the nature of the good and the just, toleration is usually regarded as an indispensable democratic virtue and as a constitutive part of liberal political practice. Traditionally, toleration is characterized as the willingness to put up with, or to permit, actions or practices of others, which one disapproves of, and which one otherwise would seek to prohibit or prevent from occurring.

Therefore, the practice of tolerance is like a democratic measure of accepting the different views of how to live well, logically respecting democratic principles as exposed by the ECtHR. In highlighting that the ideas of changes in the constitutional structures of a State, including in relation to separatist pretensions as in the case of the courses, are welcome to the broad and open debate.

Following Galeotti (2021, 90) briefly, the core features of the concept of *toleration* are: 1) agent a's dislike of agent b's views, codes, or convictions; 2) as wielding of some power of interference with the difference in question; 3) as withholding of such power in favor of leaving free to live by and pursue her ideals; 4) within the limits of self-defense and of harming others. Toleration, as a relevant social and political category, applies in a context of religious, moral and cultural pluralism where social differences do not harmoniously combine, and social groups disagree about what counts in life and how one should live.

I define tolerance as a willingness to extend civil liberties to groups you don't like. The theory of tolerance, in the political sphere, defends the belief that the promotion of freedoms of expression will make individuals and institutions more open to ideas than they would be if we were intolerant.

3.1. Political Tolerance

Political tolerance is closely linked to the concept of militant democracy[16] with the purpose of limiting tolerance to undemocratic (or intolerant) actors. Loewenstein and Popper, although most remembered in this subject, were not the only ones who developed this paradox. More broadly, the idea that the claims of intolerant groups should not be accommodated indefinitely corresponds to liberal principles (Ginsburg, Huq 2020).

Specifically on tolerance, democracy and political ideas, although Loewenstein pioneered proposing concrete standards of defense in this field, similar ideas were evident in the work of other scholars. Popper (1994, 581) refers to the paradox of tolerance and warns that unlimited tolerance must lead to the disappearance of tolerance. He argues that tolerance should not be granted to those who are intolerant, and that the right not to tolerate the intolerant should be preserved in the name of tolerance.

We can then state that the core of tolerance is self-control, where we resist our desire to vigorously prohibit the expression of activities we find unpleasant. Tolerance can be understood as a political practice that aims at neutrality, objectivity, or fairness among political agents.

Political tolerance in this respect is based on the recognition that no group has a monopoly on the truth or morality. Tolerance allows for a variety of perspectives on life or beliefs to be heard and considered, which can lead to a more robust and clearer understanding of issues, and thus, better decision-making in political decision-making bodies.

In addition to promoting the free exchange of ideas, political tolerance involves a commitment to non-discrimination and respect for the dignity and rights of all individuals, regardless of their beliefs or affiliations. This means that, even when we disagree with someone's

[16] More on the subjective, see Loewenstein. 1937, 417–432; Loewenstein, 1937, 638–658; Capoccia, 2013, 207–226; Tyulkina, 2015; Muller, 2016, 249–265; Molier and Rijpkema, 2018, 394–409.

opinions or actions, we should not resort to violence, oppression, or other forms of coercion to silence or suppress them. In general, political tolerance is a central tenet of liberal democracy and is essential for the protection of individual rights, promotion of free and open debate, and coexistence.

These paradoxes and controversies surrounding the idea of anti-democratic intolerance show that measures not to tolerate the intolerant also have a negative side. An intolerant stance, even against those who are hostile to the constitution, inevitably raises the suspicion that democracy is not fulfilling its own criteria of democratic society.

Thus, if a political party openly advocates the suppression of minorities or disrespect for any other fundamental characteristics of democracy, especially through violence, that political party can be eliminated (or "not tolerated") without democracy contradicting itself.

As we can see from the above rule, political tolerance has been invoked in cases concerning the banning of political parties. In the United Communist Party of Turkey and Others v. Turkey the ECtHR held that Turkey's banning of the party violated the right to freedom of expression and association under Article 11 of the Convention, ruling that political parties should only be banned if they use violence or advocate the destruction of democracy, and that the State must show a compelling reason to justify any restrictions on political expression. In Partidul România Mare v. Romania the ECtHR ruled that the dissolution of the party violated the right to freedom of expression and association under Article 11 of the Convention. The court stressed that while political parties may be subject to restrictions in certain circumstances, such restrictions must not be used to stifle legitimate political debate or to discriminate against certain groups.

In each of these cases-law, the ECtHR invoked the concept of political tolerance in its analysis, warning against the use of restrictions on political parties as a means of suppressing dissent or discriminating against certain groups.

4. CONCLUSION. THE TOLERANCE OF THE COURT

The ECtHR ruled in 10 cases on the prohibition of political parties. In eight cases the Court found a violation of the Convention and only in two cases found no violation. Therefore, inductively, it is con-

cluded that the ECtHR is tolerant of political parties prohibited or dissolved by the domestic Court of the Member State of the Council of Europe. The concept of tolerance is not invoked into the grounds of the judgments examined. However, even with political parties prohibited by their state because of positions hostile to the domestic Constitution, the court's understanding, in most cases, tolerates the broad debate, including these controversial positions. It is perceived that when judging, the ECtHR points out that tolerance must have a justification based on freedom (of assembly, association, expression), so the impediment to freedom should only take place in cases of extreme threat to democracy.

It was clear from the reading of the judgments, in particular *the Case Socialist Party and Others v. Turkey* and the case *ÖZDEP v. Turkey*, that the Court tolerates political arguments that bother (offend, shock, disturb), indicating a position approaching the market place of ideas, experienced by Ho and Schauer (2015) which means, in summary, that the market place of ideas supposedly distinguishes the truth from falsehood or is, at the very least, more reliable than the official or specialized selection of ideas considered true and the suppression of ideas considered false (2015, 1161–1162).

Thus, there appears to be a position of tolerance of the ECtHR towards parties considered illegal by national courts. In the only two most intolerant cases, in which the ECtHR agreed to a ban by the domestic court, these are extreme cases of violation of the democratic system with the use of violence on the part or violation of the principle of secularism. Most attempts to ban political parties, as well as some other measures that impose limitations on party activities, have been brought to the attention of the ECtHR and that, in most cases, political parties have received extremely broad protections, if they did not use violence as a means of achieving their objectives.

One of the main problems when courts face cases of prohibitions of political parties comes from respect for the rule of law, limitation of freedom of expression and proportionality of the measure and paradox of tolerance (Popper, 1994). In so, the ECtHR seems to follow a joint tolerant view of the understanding of the Venice Commission guidelines in this approach, i.e. addressing three basic principles relating to the prohibition or dissolution of political parties: (1) the exceptional nature of the ban or dissolution; (2) The proportionality of the dissolution or prohibition to the legitimate objective pursued and (3)

procedural safeguards: the procedure for the prohibition or dissolution of political parties should ensure the principles of fairness, due process and openness.[17]

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