

Dissolution of Political Parties by Courts in the World

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One of the Constitutional Court of Thailand's jurisdictions is to rule on issues pertaining to the powers and duties between constitutional organs such as the National Assembly, the Council of Ministers, the Election Commission, and other state organs. This balancing function of safeguarding the principle of separation of powers also applies to political parties. The role played by the Constitutional Court of Thailand and other courts in the world is considered a dilemma as they strive to guarantee freedom of expression and at the same time protect democratic principles. There are many measures that courts can take against political parties to achieve these goals and as a last resort, the dissolution of political parties is a viable measure that is written in the constitutions of many countries. The Republic of Czech, Germany, and Turkey are notable examples of dissolving political parties as a measure to maintain constitutionality.

In the Czech Republic, the Administrative Court dissolved the Worker's Party in February 2010. Known for its far right ideology, the party was often associated with Neo Nazis for their extremist activities. The majority of the public and media welcomed the Supreme Administrative Court's verdict as it combated any notion that would legitimize a political party (such as Hitler's National Socialist German Workers Party) that would harm human rights. Proponents of the court's decision see that the ruling is based on the principle of democratic self-defense in which state institutions have to be safeguarded from all extremes of the political spectrum; from left-wing guerillas to right-wing Neo Nazis. It is believed that once this principle has been accepted, the state can then have a wider choice of not only criminal and administrative law but also specialized state intelligence agencies to screen political extremism. On the other hand, opponents of the verdict view that the action limits political pluralism (democratic power is

dispersed among various ideological groups). If banned groups are not represented on a legal political platform, extreme ideologies may instead be disseminated through underground and violent channels.

With respect to Germany, one of the first cases brought to the European Commission on Human Rights (ECHR) post World War II was the German Communist Party (1956). Again, the ECHR's ruling was based on the principle to prevent Neo Nazism to resurface. It is no question that the party's ideologies run in extreme contrary to the protection of human rights. Nazi ideology accused capitalism and democracy to be associated with Jews and therefore, sought to exterminate or impose segregation to racial groups. The court's verdict for dissolution was because of the party's objective to "establish a society based on the communist social order through proletarian revolution and dictatorship by the proletariat". The return to dictatorship was simply incompatible with the covenants of the ECHR.

Turkey's frequent dissolution of political parties marks an extraordinary application of the Constitutional Court's powers. The concept of "*separatist propaganda*" was frequently interpreted to be behind the issue and cited as an example for banning of three political parties in during the 1990s. The Socialist Party (SP) in 1992, the Democratic Party (DEP) in 1994 and the Freedom and Democracy Party in 1999 were disbanded. These cases were brought to the ECHR, which on each occasion held that "*the aims and activities of the parties were not of a nature to pose a threat to national unity and the territorial integrity of Turkey. Accordingly, the Court found that in each of the three cases there had been a violation of Article 11 on the freedom of assembly and association.*" Since then, the Turkish Grand National Assembly debated numerous amendments to the constitution. Consequently, it will in future be much more difficult to ban political parties, such a measure being – it is to be hoped – exceptional and "used with the utmost restraint".

Moreover, in 1998, the Turkish Constitutional Court ruled that the Welfare Party (RP) should be dissolved. The dissolution of the party led to considerable reaction both nationally and internationally and gave rise to much political and legal debate. Unlike the three small parties previously dissolved, the RP had obtained 22% of the votes in the 1995 elections and 148 seats in the Turkish parliament (out of a total number of 550 seats). Portions of the Turkish public opinion, including some of the intellectual class, were against the dissolution of the party despite criticism that its aims and activities were incompatible with the current provisions of the constitution. Many political observers felt that the party should not have been sidelined but rather integrated into the system and obliged to modernize in order to be represented in the assembly. In July 2001, the Court approved the dissolution of the party, in which the action was considered “*reasonably be considered to have met a ‘pressing social need’*” for the protection of democratic society. Moreover, the judges ruled that sharia (Islamic law) was incompatible with democracy. In all, those who fear the adoption of sharia and a “holy war” have welcomed the judgment.

As courts around the world rule against political parties that have unconstitutional activities, there are various measures that can be applied. Some courts resort to less radical measures such as fines or administrative penalties while others take drastic steps such as the dissolution of political parties. As evident in the above discussion, the dissolution of political parties is practiced in courts around the world but as a last resort. The European Commission for Democracy Through Law (Venice Commission) has a guideline on “Prohibition and Dissolution of Political Parties and Analogous Measures” that was adopted in 1999.

However, it was also expressed that the diversity of legal provisions governing political party activities makes it hard to define a European standard. The historical development of each individual country and differences in the degree of tolerance bring about such a diverse political and legal environment that the same issues are not penalized in the same way or degree of severity.

In conclusion, the Venice Commission calls on the governments of member states to comply with the following principles in order to meet its guidelines of dissolving political parties:

“political pluralism is one of the fundamental principles of every democratic regime; restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country; as far as possible, less radical measures than dissolution should be used; a party cannot be held responsible for the action taken by its members if such action is contrary to its statute or activities; a political party should only be banned or dissolved as a last resort, in conformity with the constitutional order of the country, and in accordance with the procedures which provide all the necessary guarantees to a fair trial; the legal system in each member state should include specific provisions to ensure that measures restricting parties cannot be used in an arbitrary manner by the political authorities.”