



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

ENG - 2016/1
Application Form

About this application form

This form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the "Notes for filling in the application form". Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) requires that a concise statement of facts, complaints and information about compliance with the admissibility criteria MUST be on the relevant parts of the application form itself. The completed form should enable the Court to determine the nature and scope of the application without recourse to any other submissions.

Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

A. The applicant

A.1. Individual

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to section A.2.

1. Surname

2. First name(s)

3. Date of birth

e.g. 31 12 1960
D D M M Y Y Y Y

4. Place of birth

5. Nationality

6. Address

7. Telephone (including international dialling code)

8. Email (if any)

9. Sex male female

A.2. Organisation

This section should only be filled in where the applicant is a company, NGO, association or other legal entity. In this case, please also fill in section D.1.

10. Name

Cumhuriyet Halk Partisi (Republican People's Party)

11. Identification number (if any)

12. Date of registration or incorporation (if any)

e.g. 27 09 2012
D D M M Y Y Y Y

13. Activity

Political party

14. Registered address

Cumhuriyet Halk Partisi Genel Merkezi,
Anadolu Bulvarı No. 12
Söğütözü - Ankara
Turkey

15. Telephone (including international dialling code)

+90 312 207 40 00

16. Email

caglar.caglayan@chp.org.tr

B. State(s) against which the application is directed

17. Tick the name(s) of the State(s) against which the application is directed

- | | |
|---|--|
| <input type="checkbox"/> ALB - Albania | <input type="checkbox"/> ITA - Italy |
| <input type="checkbox"/> AND - Andorra | <input type="checkbox"/> LIE - Liechtenstein |
| <input type="checkbox"/> ARM - Armenia | <input type="checkbox"/> LTU - Lithuania |
| <input type="checkbox"/> AUT - Austria | <input type="checkbox"/> LUX - Luxembourg |
| <input type="checkbox"/> AZE - Azerbaijan | <input type="checkbox"/> LVA - Latvia |
| <input type="checkbox"/> BEL - Belgium | <input type="checkbox"/> MCO - Monaco |
| <input type="checkbox"/> BGR - Bulgaria | <input type="checkbox"/> MDA - Republic of Moldova |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina | <input type="checkbox"/> MKD - "The former Yugoslav Republic of Macedonia" |
| <input type="checkbox"/> CHE - Switzerland | <input type="checkbox"/> MLT - Malta |
| <input type="checkbox"/> CYP - Cyprus | <input type="checkbox"/> MNE - Montenegro |
| <input type="checkbox"/> CZE - Czech Republic | <input type="checkbox"/> NLD - Netherlands |
| <input type="checkbox"/> DEU - Germany | <input type="checkbox"/> NOR - Norway |
| <input type="checkbox"/> DNK - Denmark | <input type="checkbox"/> POL - Poland |
| <input type="checkbox"/> ESP - Spain | <input type="checkbox"/> PRT - Portugal |
| <input type="checkbox"/> EST - Estonia | <input type="checkbox"/> ROU - Romania |
| <input type="checkbox"/> FIN - Finland | <input type="checkbox"/> RUS - Russian Federation |
| <input type="checkbox"/> FRA - France | <input type="checkbox"/> SMR - San Marino |
| <input type="checkbox"/> GBR - United Kingdom | <input type="checkbox"/> SRB - Serbia |
| <input type="checkbox"/> GEO - Georgia | <input type="checkbox"/> SVK - Slovak Republic |
| <input type="checkbox"/> GRC - Greece | <input type="checkbox"/> SVN - Slovenia |
| <input type="checkbox"/> HRV - Croatia | <input type="checkbox"/> SWE - Sweden |
| <input type="checkbox"/> HUN - Hungary | <input checked="" type="checkbox"/> TUR - Turkey |
| <input type="checkbox"/> IRL - Ireland | <input type="checkbox"/> UKR - Ukraine |
| <input type="checkbox"/> ISL - Iceland | |

C. Representative(s) of the individual applicant

An individual applicant does not have to be represented by a lawyer at this stage. If the applicant is not represented please go to section E.

Where the application is lodged on behalf of an individual applicant by a non-lawyer (e.g. a relative, friend or guardian), the non-lawyer must fill in section C.1; if it is lodged by a lawyer, the lawyer must fill in section C.2. In both situations section C.3 must be completed.

C.1. Non-lawyer

18. Capacity/relationship/function

19. Surname

20. First name(s)

21. Nationality

22. Address

23. Telephone (including international dialling code)

24. Fax

25. Email

C.2. Lawyer

26. Surname

27. First name(s)

28. Nationality

29. Address

30. Telephone (including international dialling code)

31. Fax

32. Email

C.3. Authority

The applicant must authorise any representative to act on his or her behalf by signing the first box below; the designated representative must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated above to represent me in the proceedings before the European Court of Human Rights concerning my application lodged under Article 34 of the Convention.

33. Signature of applicant

34. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27 09 2015

I hereby agree to represent the applicant in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

35. Signature of representative

36. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27 09 2015

D. Representative(s) of the applicant organisation

Where the applicant is an organisation, it must be represented before the Court by a person entitled to act on its behalf and in its name (e.g. a duly authorised director or official). The details of the representative must be set out in section D.1.

If the representative instructs a lawyer to plead on behalf of the organisation, both D.2 and D.3 must be completed.

D.1. Organisation official

37. Capacity/relationship/function (please provide proof)

Chairman (Appendix 23)

38. Surname

Kılıçdaroğlu

39. First name(s)

Kemal

40. Nationality

Turkish

41. Address

Kemal Kılıçdaroğlu,
Genel Başkan,
Cumhuriyet Halk Partisi Genel Merkezi,
Anadolu Bulvarı No. 12
Söğütözü - Ankara
Turkey

42. Telephone (including international dialling code)

+90 312 207 40 40

43. Fax

44. Email

kemal.kilicdaroglu@chp.org.tr

D.2. Lawyer

45. Surname

Çağlayan

46. First name(s)

Çağlar

47. Nationality

Turkish

48. Address

Av. Çağlar Çağlayan,
Cumhuriyet Halk Partisi Genel Merkezi,
Anadolu Bulvarı No. 12
Söğütözü - Ankara
Turkey

49. Telephone (including international dialling code)

+90 312 207 40 00

50. Fax

51. Email

caglar.caglayan@chp.org.tr

D.3. Authority

The representative of the applicant organisation must authorise any lawyer to act on its behalf by signing the first box below; the lawyer must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated in section D.2 above to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

52. Signature of organisation official

Kemal KILIÇDAROĞLU

53. Date

04072017 e.g. 27 09 2015
D D M M Y Y Y Y

I hereby agree to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

54. Signature of lawyer

Çağlar ÇAĞLAYAN

55. Date

04072017 e.g. 27 09 2015
D D M M Y Y Y Y

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

56.

1. The amendments of the Constitution to transform the parliamentary system into a hyper-presidential one which were initiated by the ruling party, AKP ('Adalet ve Kalkınma Partisi' - Justice and Development Party) were adopted by the Parliament on 21 January 2017 after an irregular procedure with a hasty debate and disrespect for the rule of secret ballot by a number of AKP deputies. The votes in favour of the amendments were insufficient so, they were put to referendum by the President relying on Article 175 of the Constitution. The text of the amendments were published in the Official Gazette on 11 February 2017 without an explanatory report or a guide. The referendum was held on 16 April 2017 after a restricted public debate under emergency measures which did not contribute to forming free and informed public opinion on the constitutional amendments set to change the whole political system of the country. The restrictions on freedom of expression and undue pressure over the media, bans on freedom of assembly and demonstrations and imbalance of means and opportunities between the proponent and opponent parties in their campaigns were the facts confirmed by (i) the report of the Parliamentary Assembly (PACE), "The Functioning of Democratic Institutions in Turkey", dated 5 April 2017 (Appendix 1), (ii) its Addendum, dated 24 April 2017 (Appendix 2), (iii) the election observation report of the PACE, "Observation of the referendum on the constitutional amendments in Turkey", dated 29 May 2017 (Appendix 3) and, (iv) the Final Report of the OSCE/ODIHR Limited Referendum Observation Mission on the constitutional referendum of 16 April 2017, dated 22 June 2017 (Appendix 4).

2. The rules relevant to the referendum held on 16 April 2017 are: (i) The first sentence of paragraph 2 of Article 67 of the Constitution: "Elections and referendums shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret and direct voting, universal suffrage, public counting and tally of votes" and the last paragraph of the same Article: "Amendments to the electoral laws shall not apply to the elections to be held within one year from the date of entry into force of the amendments" (Appendix 5). (ii) Article 1 of the Law on the Basic Rules of Elections and Electoral Rolls, law no. 298: "The provisions of this law shall apply to ... presidential, parliamentary ... elections and constitutional referendums. (Appendix 6). (iii) Paragraph 4 of Article 98 of the same Law: "... ballot envelopes ... without bearing the seal [control stamp] of District Election Board and Ballot Box Committee ... shall be deemed invalid (Appendix 7). (iv) Paragraph 3 of Article 101 of the same Law: "... ballot papers ... without bearing the seal [control stamp] of the Ballot Box Committee on the back are invalid" (Appendix 8). (v) Paragraphs c) and h) of Article 43 of the Circular of 14 February 2017 no. 135/I of the Supreme Board of Elections (SBE) ("Yüksek Seçim Kurulu" - YSK) issued to regulate the administration of the referendum: "Ballot papers ... c) which do not bear the seal [control stamp] of the Ballot Box Committee on the back; ... h) which stamped other than 'choice' imprint or any other special mark, name, signet, seal or fingerprint ... are invalid" (Appendix 9).

3. On the referendum day, upon having received information that in some polling stations, stamps with 'yes' imprint were being used instead of stamps with 'choice' imprint, the SBE took the decision no. 559, declaring the use of stamps with 'yes' imprint as valid all over the country (Appendix 10) in breach of the rule laid down by its own Circular no. 135/I. As a consequence of this decision, some voters were misled to think that with 'yes' stamp, only the 'yes' section of the ballot paper could be stamped, which was indeed an undue influence on voters violating their free will and the fairness of the voting procedure.

4. On the same day at 16:10, after the voting procedure in eastern provinces was ended at 16:00, the ruling party's (AKP) representative to the SBE informed it that in some polling stations, ballot envelopes and ballot papers were being cast without bearing the necessary seals [control stamps] and, requested the SBE to decide for their validity. At 16:45, before the ending time of the voting procedure in western provinces which was 17:00 hours, the SBE took the decision no. 560, stating that unsealed ballot envelopes and the ballot papers were valid throughout the country (Appendix 11). The time of the request and the time of the decision were indicated by the member of the SBE in the second paragraph of his dissenting opinion attached to the decision no. 573 (Appendix 13, cited below).

5. On 18 April 2017, the applicant party filed an objection with the SBE (Appendix 12) against the decision no. 560 asserting that the decision in question denied the statutory requirement of sealing the ballot papers and implementation of this requirement was not left to the discretion of the SBE. Also, the denial of this requirement was contrary to the SBE's own Circular no. 135/I. It was further asserted that the rationale for the requirement of sealing the ballot envelopes by the District Election Boards and Ballot Box Committees and, ballot papers by the Ballot Box Committees was to avoid fraudulent balloting by putting stolen ballot envelopes and ballot papers into the ballot boxes after stamping the ballot papers outside the polling stations. In this respect, the conclusion reached by the SBE in its said decision that fraudulent

Statement of the facts (continued)

57. balloting was not possible because, the unsealed ballot papers contained the necessary filigree, was countered by the applicant party arguing that existence of filigree on the ballot papers could indicate only that they were not falsified but could not show that they were not stolen and then put into the ballot boxes which was not a negligible possibility considering the fact that in a number of polling stations it was found early in the morning of the referendum day that some ballot papers and envelopes were missing from the ballot bags. So, the right course to follow was to establish the quantity of the unsealed ballot papers during the counting procedure and determine their validity thereafter. However, the SBE preferred to take a pre-emptive decision declaring the validity of the unsealed ballot papers entailing them to mix up with sealed ones which made it impossible to establish and invalidate the unsealed ballot papers on ballot box basis and where necessary, repeat the voting procedure in the relevant districts. Moreover, sealing the back of the ballot papers by the members of the Ballot Box Committees after the ballot envelopes were opened, aggravated the unlawful situation. In the objection of the applicant party, complaints about the pressures on the voters by the governors and the security officers in some districts and provinces and about the biased and partisan broadcasts of TV channels were reiterated by referring to previous formal complaints which were left unanswered. It was further complained that the ballot bags were kept out of the sight of the parties that it could not be possible to control fraudulent interventions. It was submitted in the objection that while complaints by the applicant party of serious nature were left unanswered, the requests of the representative of the ruling party were acceded to immediately even if it costed the violation of the mandatory provisions of the Law no. 298. The applicant party also drew the attention of the SBE to the point that its impugned decision no. 560 restricted the right to file objections against the use of unsealed ballot papers - the right stemming from the statutory provisions which prohibit such unlawful use of ballot papers. Finally, it was brought to the attention of the SBE that its unlawful and unfair conduct during the referendum campaign and during the referendum day impaired the integrity of the referendum and cast doubt on the whole process whether it was lawful and democratic. For all these reasons, it was requested from the SBE to decide for the annulment of the referendum on the grounds that the whole procedure was unlawful.

6. The next day, on 19 April 2017, the SBE rejected the objections made by the applicant party by the decision no. 573 (Appendix 13). It relied on its old decisions and referred to Article 3 of the First Protocol to the Convention. The decision can be analysed as follows: Firstly, the SBE breached the provisions of its own Circular no. 135/I as mentioned above. Secondly, although the SBE acknowledged that missing ballot papers from the ballot bags were established by the Ballot Box Committees early in the morning of the referendum day and, in the face of numerous irregularities occurred and pressures exerted by the government officials in the whole referendum process, it showed no genuine concern to the doubts whether fraudulent interventions took place. Thirdly, it restrained itself from conducting a proper examination of the issues raised by the applicant party which were directly linked with the integrity of the referendum. Fourthly, it approved the biased and partisan broadcasts of the TV channels during the campaign relying on the emergency decree no. 687 which repealed Article 149/A of the Law no. 298 criminalising biased and partisan broadcasting (Appendix 14 - Article 149/A before being repealed) (Appendix 15 - Article 10 of the emergency decree no. 687 which repealed Article 149/A). It must be underlined that this approval was contrary to the last paragraph of Article 67 of the Constitution which prohibited the application of amendments to the electoral laws within one year from the date of entry into force of the amendments (please see Appendix 5, cited above). The amendment which repealed Article 149/A of the electoral law no. 298, entered into force on 9 February 2017 on the day the emergency decree no. 687 published in the Official Gazette which was two months before the referendum (please see the date of the Official Gazette in Appendix 15, cited above). It is remarkable that the SBE did not feel itself bound by the mandatory provisions so tight as this inapplicable provision. Fifthly, it is apparent that the SBE did not bother either about lawfulness or fairness of the campaigning, voting and vote counting phases of the referendum. Sixthly, the reference to Article 3 of the First Protocol to the Convention made by the SBE in its decision no. 573 indicated that it found the referendum of 16 April 2017 to be falling within the scope of the said Article on account of the fact that the purpose of the referendum was to provide the President dominance over the three powers of the State and furnish him with some legislative powers.

7. In the dissenting opinion of the member of the SBE, the decision no. 560 which allowed the use of unsealed ballot papers was criticized on the grounds that the SBE put itself in place of the legislator while considering the expediency of the use of such ballot papers instead of considering the legality of the matter. He also criticized the mixing up sealed and unsealed ballot papers together because, it caused uncertainty about the quantity of the valid votes and doubts about the integrity of the whole referendum process. He did not approve allowing the biased and partisan TV broadcasts during the campaign on the pretext that Article 149/A of the Law no. 298 was repealed. He asserted that under the last paragraph of Article 67 of the Constitution, the said repealing amendment was not applicable. He found the measures taken on the basis of the state of emergency restricting the exercise of fundamental rights and freedoms to be detrimental to the democratic process.

Statement of the facts (continued)

- 58.
8. The applicant party campaigned for 'no' vote because, it interpreted the proposed constitutional amendments as undemocratic and being against the principle of rule of law since, the amendments were structured to create a one-man regime without any effective check and balance mechanism, provide the President dominance over the three powers, set aside the separation of powers, debilitate the legislature by putting it in such a position that it would be compelled to adjust its activities according to the wishes of the President and, render the whole judiciary dependent on the President. The Venice Commission in its "Opinion on the amendments to the Constitution", dated 13.3.2017, established the same adverse features of the proposed amendments (Appendix 16). The applicant party would like to stress that margin of appreciation of the member States of the Council of Europe does not extend to putting such constitutional amendments to referendum that would degenerate the democratic structure into an authoritarian regime. In this connection, para. 98 of the *Refah Partisi (Welfare Party) and others v. Turkey* Judgment [GC] (13.2.2003) is recalled, where it reads; "... a political party may promote a change in ... constitutional structures ... on two conditions: firstly, the means to that end must be legal and democratic; secondly, the change proposed must itself be compatible with the fundamental democratic principles" (in the same vein, please see also the sub-title "3. Substantive validity of texts submitted to a referendum" under the title "III. Specific rules" of the "Code of Good Practice on Referendums", dated 19 March 2007, drafted by the Venice Commission - Appendix 17). At this point, it is submitted that the applicant party is faced with a sufficiently established and imminent danger of losing its rights and freedoms as a result of the substantially undemocratic constitutional amendments (please see "Opinion on the amendments to the Constitution" - Venice Commission - Appendix 16, cited above) which was brought into effect by an unfair and undemocratic referendum disregarding the standards set by the Venice Commission (please see the sub-title "2. The procedural validity of texts submitted to a referendum" under title "III. Specific rules" of the "Code of Good Practice on Referendums" - Appendix 17, cited above).
9. It was vital for the applicant party to have reliable voting results of the referendum, however, by its objection against the decision no. 560 of the SBE, the applicant party did not seek only to dispell doubts on the outcome of the referendum but, at the same time, sought to obtain a decision to rectify the unlawful and undemocratic defects of the whole referendum process ranging from the campaigning phase to the tally of votes. It was rejected by a decision no. 573 (Appendix 13, cited above) which was final in terms of Article 35 of the Convention and there was no possibility for judicial review or a final appeal to a court as envisaged by the "Code of Good Practice on Referendums" of the Venice Commission under sub-title "3.3. An effective system of appeal" under title "II. Conditions for implementing these principles" (Appendix 17, cited above).
10. Firstly, the applicant party is the victim of the unfavourable and undemocratic campaigning conditions of the referendum accompanied with the disproportionate measures of the state of emergency and undue pressures of government officials on the voters and media which all these violated the right under Article 11 of the Convention, namely, the right to collective exercise of the freedom of expression and forming an opinion on political matters such as, the constitutional amendments changing the governmental system. Secondly, due to the said unfavourable and undemocratic campaigning conditions and the unlawful conduct and decisions of the SBE, the applicant party is the victim of the violation of the right of having ensured the free expression of the opinion of people in making the choice of maintaining the separation of powers, independence of judiciary and rule of law which are the prerequisites of the effective political democracy which is the sole guarantee of the Convention rights, including the right to free choice of the legislature under Article 3 of the First Protocol. In this connection, it is recalled that democracy is a fundamental feature of the European public order and the Convention was designed to maintain and promote the ideals and values of a democratic society, as phrased in para. 45 of the *United Communist Party of Turkey and others v. Turkey* Judgment (30.1.1998) and reiterated in para. 88 of the *Refah Partisi (Welfare Party) and others v. Turkey* Judgment (cited above). It is submitted that, unfavourable and undemocratic campaigning conditions of the referendum and the undemocratic constitutional amendments which took effect as a result of the impugned referendum process are all concerned with the future of democracy and Convention rights in Turkey. It follows that the applicant party, being an inevitable political element of the democratic system and a political representative of at least a considerable part of the society is the victim of both sets of violations. Since, none of these violations were remedied by the SBE, the violations it faced with, are still continuing.
11. The unlawfulness and unfairness of the conduct and decisions of the SBE was assessed in the expert opinion of Prof. Dr. Sami Selçuk, the former President of the Court of Cassation, dated 10.5.2017 (the text in Turkish is in Appendix 18/a and its English translation is in Appendix 18/b).

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

59. Article invoked
Article 3 of the First Protocol
(Article 3)

Explanation

12. Regarding the scope of Article 3, the Court stated in its first Judgment on this Article that the word "legislature" has to be interpreted in the light of the constitutional structure of the State in question (Matthieu-Mohin and Clerfayt v. Belgium Judgment, 2.3.1987, para. 53). In the Matthews v. The U.K. Judgment (18.2.1999), the Court further stated that in order to determine the applicability of Article 3 to the body subject to the elections in question, regard must be had not solely to the strictly legislative powers the body has, but also to that body's role in the overall legislative process (paras. 48-49). From the same viewpoint, it examined In the Rasul Guliyev v. Azerbaijan decision (27.5.2004) whether the presidential decrees or orders contradicted or superseded the parliament's legislation leading to consider the presidential election to fall within the scope of Art. 3. In the Vito Sante Santoro v. Italy Judgment (1.7.2004), the power of the regional councils to enact laws in a number of pivotal areas in a democratic society, such as administrative planning, public health and education was considered as making the regional councils to be the constituent parts of the legislature and therefore, their elections to fall under the protection of Article 3 (paras. 52-53). In the Ljube Boskoski v. The Former Yugoslav Republic of Macedonia decision (2.9.2004), the powers of the president were enumerated and examined from the viewpoint whether these powers would suffice to apply Article 3 to the elections of the president. In the Py v. France Judgment (11.1.2005), the powers of the new Congress of New Caledonia were examined whether the involvement of the new Congress in the legislative process was sufficient for the purposes of Article 3 (paras. 38-43). The same approach was maintained in the Georgian Labour Party v. Georgia decision (22.5.2007), the Sejdic and Finci v. Bosnia and Herzegovina Judgment (22.12.2009) and the Krivobokov v. Ukraine decision (19.2.2013). Finally, the statement of the Court in the joint decision of Joseph McLean and Kevin Cole v. The U.K. (11.6.2013; para. 33) that there was nothing in the nature of the referendum at issue to lead the Court to reach a different conclusion than those so far reached, indicated the possibility of applying Article 3, in case a referendum of different nature, such as the constitutional referendum held in Turkey on 16 April 2017, is brought before it.

13. The amendments of the constitution which directly affect the operation of the political democracy in Turkey are briefly as follows: (i) The President who is the head of the executive power, may at the same time be the leader of the majority party in the Parliament as it is since 21 May 2017 due to the immediate effect of Art. 18/c of the amendments. Owing to this change, the President gained the power to control the whole legislative process, including the initiation and passage of laws by means of the majority party in the Parliament of which he is the leader. (ii) The power of the President to control the legislative process is reinforced by the unlimited discretion to dissolve the Parliament (to renew the elections) conferred on him by Art. 11 of the amendments. (iii) Also, in Art. 11, it is envisaged that in the event of the renewal of the elections, the election of the President and the Parliament shall be held simultaneously which boosts the influence of the President on the formation of the majority in the Parliament. It must be noted that according to the new rule, even the routine elections of the Parliament shall be held simultaneously with the Presidential elections. (iv) The power of the President to veto (to send back) the laws enacted by the Parliament is strengthened by making it difficult for the Parliament to adopt again the same law unchanged due to the new quorum of absolute majority of the total number of the members of the Parliament, laid down by Art. 16/C of the amendments. Before the amendments, the quorum was the absolute majority of the members who were present in the session. (v) The power to appoint and dismiss the government or its members is conferred on the President by Art. 8 and 10 of the amendments. This power is unlimited and exercised on the sole discretion of the President while the Parliament has no say on the matter. (vi) Same principle applies to the high rank officials as envisaged by Art. 8 of the amendments, where it is further stated that the procedures for the appointment and dismissal of these high rank officials shall be regulated by a presidential decree. (vii) The President is empowered to organize the whole governmental structure, including

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

60. Article invoked	<p>Explanation</p> <p>the ministries, reaching to every official of the staff by presidential decrees (Art. 10). This power belonged to the Parliament before the amendments. (viii) The presidential decrees take the place of the decrees having force of law (Art. 16/B). However, there will be no legislative authorisation for the presidential decrees since, such authorisation is repealed by the amendments (Art. 16/E). Although the scope of the presidential decrees is confined to executive matters (Art. 8), the limits of the "executive matters" are not specified and their legislative and judicial control is almost impossible due to the fact that the Parliament is under the control of the President because of his leadership of the majority party in the Parliament and, the composition of the Constitutional Court - the competent body to supervise the presidential decrees - is dependent on the President. It must be recalled that the members of the Constitutional Court are appointed by the majority of the Parliament (3 out of 15 members) i.e., the majority party with the leadership of the President and, by the President himself (12 out of 15 members). (ix) The power to form the composition of the Council of Judges and Prosecutors consisting of 13 members including the Minister of Justice and the Undersecretary of the Ministry as the permanent members - the competent body to appoint and dismiss judges and prosecutors - is conferred on the President. Accordingly, 4 members of the Council are appointed by the President and 7 members by the Parliament i.e., by the President because of his leadership of the majority party in the Parliament. It must be recalled that the Ministry of Justice and the Undersecretary of the Ministry are also appointed by the President. This change is applied with immediate effect (Art. 14 and 17) and the new Council started to operate from 7 June 2017. (x) The power to prepare the budget is conferred on the President. The budget is to be submitted to the Parliament for approval but, in case it is not approved, the President has the power to put the budget of the previous year in effect (Art. 15) which substantially debilitates the function of the legislature. (xi) The power to declare state of emergency on discretionary basis is conferred on the President. Furthermore, the President is empowered to issue decrees having force of law without being bound by the limitations set by the Constitution for the protection of the fundamental rights and freedoms (Art. 12). Both, the declaration of state of emergency and state of emergency decrees are subject to the approval of the Parliament. However, this approval is not effective because of the President's dominance over the Parliament.</p> <p>All the referred Articles of the amendments can be found in English in Appendix 19. The changes impairing the separation of powers, the functions of the legislature and the independence of the judiciary as briefly enumerated here are all confirmed by the "Opinion on the Amendments to the Constitution" of the Venice Commission (Appendix 16, cited above). These facts render Article 3 applicable in the present case in the light of the case-law submitted in para. 12 above. Moreover, it would be contrary to the main ideals and values of a democratic society to exclude a referendum resulting in a significant damage to an effective political democracy, out of the scope of Article 3 - the right which it contained can be ensured only by an effective political democracy, as it is the case for every Convention right. Due to the unfavourable and undemocratic campaigning conditions of the referendum, the unlawful conduct and decisions of the SBE and inaccurate voting results, as explained in the statement of facts above, the applicant party's freedom to express the opinion against the undemocratic constitutional amendments, was violated. Had it been otherwise, the undemocratic constitutional amendments might not have taken effect.</p>
Article 11 of the Convention	14. Due to the unfavourable and undemocratic campaigning conditions of the referendum, as explained in the statement of facts above, the applicant party's right to exercise collective freedom to form an opinion against the undemocratic constitutional amendments, was violated.
Article 13 of the Convention	15. Since there was no possibility for judicial review or appeal against the decisions of SBE to ensure objectivity and avoid arbitrariness in the administration of referendum, the right to an effective remedy was violated. In this respect, it is referred to the <i>Grossaru v. Romania</i> Judgment (2.3.2010, paras. 61-62).

G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

61. Complaint	Information about remedies used and the date of the final decision
<p>The decision allowing the use of unsealed ballot papers on the referendum day and the previous complaints about the unlawful and unfair conduct of the authorities to which no response was received.</p>	<p>16. As submitted in para. 5 above, an objection was filed with the SBE on 18 April 2017 (Appendix 12, cited above). The next day, on 19 April 2017, the objection of the applicant party was rejected by a decision of the SBE no. 573 (Appendix 13, cited above). This was the final decision in terms of Article 35 of the Convention because, according to paragraph 2 of Article 79 of the Constitution - which reads; "No appeal shall be made to any authority against the decisions of the SBE" - no appeal or any judicial review is possible. The case-law of the Constitutional Court is consistent with this provision. As a matter of fact, the Constitutional Court dismissed the individual application made by Atila Sertel on 14.7.2015, on the grounds that it was not competent <i>ratione materiae</i> to examine the case due to the provision of paragraph 2 of Article 79 of the Constitution (Appendix 20). The same reasoning was relied on, in the Oğuz Oyan decision of 14.7.2015 (Appendix 21), the Muhammet Emin Karapaça and Toplumsal Uzlaşma ve Kalkınma Partisi (Social Reconciliation and Development Party) decisions of 27.10.2015 (Appendix 22). So, there is an established case-law of the Constitutional Court that does not allow individual petitions to be made to it against the decisions of SBE. In this legal framework, the sole domestic remedy which is to file an objection with the SBE has been exhausted.</p>

62. Is or was there an appeal or remedy available to you which you have not used?

Yes

No

63. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

H. Information concerning other international proceedings (if any)

64. Have you raised any of these complaints in another procedure of international investigation or settlement?

Yes

No

65. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

66. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

Yes

No

67. If you answered Yes above, please write the relevant application number(s) in the box below.

- 1) Case of Cumhuriyet Halk Partisi v. Turkey (application no.: 19920/13) - Judgment of 26 April 2016
- 2) Case of Cumhuriyet Halk Partisi v. Turkey (application no.: 16572/15) - Inadmissibility decision of 30 August 2016
- 3) Cumhuriyet Halk Partisi v. Turkey (application number not yet received) (this application was made in October 2016)

I. List of accompanying documents

You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:

- arrange the documents in order by date and by procedure;
- number the pages consecutively; and
- NOT staple, bind or tape the documents.

68. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found.

1.	Appendix 1- Report of the Parliamentary Assembly (PACE), "The Functioning of Democratic Institutions in Turkey" dated 5 April 2017	p.
2.	Appendix 2- Addendum, dated 24 April 2017 to the Report in Appendix 1	p.
3.	Appendix 3- Election observation report of the PACE, "Observation of the referendum on the constitutional amendments in Turkey", dated 29 May 2017	p.
4.	Appendix 4- Final Report of the OSCE/ODIHR Limited Referendum Observation Mission on the constitutional referendum of 16 April 2017, dated 22 June 2017	p.
5.	Appendix 5- Article 67 of the Constitution	p.
6.	Appendix 6- Article 1 of the Law on the Basic Rules of Elections and Electoral Rolls, law no. 298	p.
7.	Appendix 7- Article 98 of the Law on the Basic Rules of Elections and Electoral Rolls, law no. 298	p.
8.	Appendix 8- Article 101 of the Law on the Basic Rules of Elections and Electoral Rolls, law no. 298	p.
9.	Appendix 9- Article 43 of the Circular of 14 February 2017 no. 135/I of the Supreme Board of Elections (SBE)	p.
10.	Appendix 10- Decision no. 559 taken on the referendum day by the Supreme Board of Elections (SBE)	p.
11.	Appendix 11- Decision no. 560 taken on the referendum day by the Supreme Board of Elections (SBE)	p.
12.	Appendix 12- Objection of the applicant party filed with the SBE on 18 April 2017	p.
13.	Appendix 13- Decision no. 573 taken on 19 April 2017 by the SBE, rejecting the objection of the applicant party	p.
14.	Appendix 14- Article 149/A of the Law no. 298 criminalising biased and partisan broadcasting	p.
15.	Appendix 15- Article 10 of the emergency decree no. 687 which repealed Article 149/A	p.
16.	Appendix 16- "Opinion on the amendments to the Constitution" of the Venice Commission, dated 13.3.2017	p.
17.	Appendix 17- "Code of Good Practice on Referendums" drafted by the Venice Commission, dated 19 March 2007	p.
18.	Appendix 18/a- Legal opinion of Prof. Dr. Sami Selçuk (original text in Turkish); Appendix 18/b- Translation into English	p.
19.	Appendix 19- "Law no. 6771 amending the Constitution", English version of the amendments prepared by the Venice Commission, dated 23.2.2017	p.
20.	Appendix 20- Atila Sertel decision of the Constitutional Court, dated 14.7.2015	p.
21.	Appendix 21- Oğuz Oyan decision of the Constitutional Court, dated 14.7.2015	p.
22.	Appendix 22- Press Release on Muhammet Emin Karapaça and Toplumsal Uzlaşma ve Kalkınma Partisi (Social Reconciliation and Development Party) decisions of the Constitutional Court, dated 27.10.2015	p.
23.	Appendix 23- Second paragraph of Article 36 of the Internal Regulation ("Tüzük") of the Party stating that the Chairman is authorized to represent the Party.	p.
24.		p.
25.		p.

Any other comments

Do you have any other comments about your application?

69. Comments

The applicant party respectfully requests the Court to find that Article 3 of the First Protocol and Articles 11 and 13 of the Convention were violated and the violation of these Articles can be remedied only by repeating the referendum after rectifying the defects established by the PACE and OSCE/ODIHR and, on the basis of respect for the principle of lawfulness and democratic standards set by the Venice Commission. The applicant party further requests an equitable just satisfaction and, costs and expenses to be granted.

Declaration and signature

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

70. Date

04 | 07 | 2017 e.g. 27 09 2015
D D M M Y Y Y Y

The applicant(s) or the applicant's representative(s) must sign in the box below.

71. Signature(s) Applicant(s) Representative(s) - tick as appropriate

Kemal KILIÇDAROĞLU

Çağlar ÇAĞLAYAN

Confirmation of correspondent

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond. Where the applicant is represented, the Court will correspond only with the representative (lawyer or non-lawyer).

72. Name and address of Applicant Representative - tick as appropriate

Av. Çağlar Çağlayan
Cumhuriyet Halk Partisi Genel Merkezi,
Anadolu Bulvarı No. 12
Söğütözü - Ankara
Turkey

The completed application form should be signed and sent by post to:

The Registrar
European Court of Human Rights
Council of Europe
67075 STRASBOURG CEDEX
FRANCE

