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COMMENTS
ON THE CONSTITUTIONAL AND LEGAL PROVISIONS
RELEVANT FOR THE PROHIBITION
OF POLITICAL PARTIES IN TURKEY

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In Austria, the Constitutional Court does not decide on a ban on a political party. However, there is a competence of every court to decide this question *incidenter* in case of a political party which is involved in proceedings before a particular court when it is questionable whether that party is in conformity with the Party Act. However, there is neither a general prohibition of certain parties, nor a set proceeding to decide whether a party is prohibited or not.

According to the first sentence of Section 1 para. 3 of the Austrian Party Act ("*Parteiengesetz*") the formation of a political party is free. Section 1 para. 4 Party Act determines that, in order to get legal entity, every party has to deposit its bylaws at the Federal Ministry of the Interior.

Section 1 para. 3 Party Act also determines that the formation of a political party is not free, if a constitutional law provides differently. The formation of the party must not violate constitutional law.

In general, the first sentence of Section 1 para. 3 Party Act can be understood as a reference to Section 3 seq. of the "*Verbotsgesetz*" and to the Articles 9 and 10 of the Treaty of Vienna, which ban fascistic and national socialist organisations.¹ The exact scope of this provision has not yet been fully administered. In a series of judgements the Austrian Constitutional Court has, however, established a number of general guidelines. In accordance with the common Austrian doctrine it follows an „integrative approach“, considering all parties that represent or practise neo-nazistic thoughts as banned by the first sentence of Section 1 para. 3 Party Act. A definition which thoughts are neo-nazistic can be deduced from the entire "*Verbotsgesetz*" as well as from the Treaty of Vienna.

The Constitutional Court follows the above mentioned guidelines. According to the Court every public authority has to decide on a case by case basis whether the party's bylaws or its party platform ought to be considered as a "*Wiederbetätigung*", which is the re-engagement in national socialist activities. In doing so it does not only have to take account of the bylaws and the party platform, but it also has to consider the actual events since the deposit of the bylaws.²

If the public authority decides that either of the above mentioned factors can be seen as a "*Wiederbetätigung*", the party did not gain legal entity, even though its bylaws have been deposited at the Federal Ministry of the Interior. The deposit itself then collides with the constitutional law, since it could be considered a "*Wiederbetätigung*". If a party whose bylaws and party platform originally were consistent with the constitutional law sets actions which violate it after the party gained legal entity, it can lose the very. However, it is in dispute whether the legal entity can be regained by a behaviour consistent with the constitutional law. Section 1 para. 3 ParteienG would suggest such a flexible prohibition of parties just like the fact that the Constitutional Court case law requires the actual events after the deposit to be considered by the public authority deciding.³

Therefore, it can be said that although Austria does not have a general prohibition of certain parties, it has a "quasi"-prohibition, which means that parties whose bylaws or party platform constitute a "*Wiederbetätigung*" of any form can not gain legal entity in the first place or even lose it, if their bylaws and party platform used to be consistent with the constitutional law, but are not anymore.

¹ Collection of decisions of the Constitutional Court Nr.10705/1985.

² Collection of decisions of the Constitutional Court Nr. 9648/1983, 11.258/1987.

³ Collection of decisions of the Constitutional Court Nr. 11.258/1987.